RIGHTS AT WORK!

March 2019

Tackling labour exploitation in Poland, Bulgaria and Romania

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Colophon

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La Strada International (LSI) is a leading and value-driven platform uniting European NGOs, operating independently and from a grassroots level, to ensure a world without trafficking in human beings where human rights are respected. LSI monitors European anti-trafficking policies and measures and promotes human rights protection of trafficked persons through lobbying and advocacy, data collection and analytical research and capacity building.

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In general

1 Introduction

1.1 Rights at Work – a project to tackle labour exploitation

The project *Rights at Work – Tackling Labour Exploitation in All Economic Sectors* was implemented over a period of 26 months between 2016 and 2018 and coordinated by La Strada International, with six national implementation partners from Poland (La Strada Poland and Association for Legal Intervention/SIP), Bulgaria (Animus Association), Romania (AIDRom) and Netherlands (SOMO, FairWork). The project, funded by the Dutch Ministry of Foreign Affairs (Small Human Rights Fund), aimed to contribute to addressing and preventing labour rights infringements and exploitation (including severe forms of labour exploitation such as human trafficking and forced labour) in Poland, Bulgaria and Romania.

Rights at Work was informed by practitioners signalling for a number of years that important stakeholders in the identification of labour rights infringements and exploitation are being hampered by insufficient knowledge on the context of exploitation and the role of businesses therein. Additionally, there is a noted lack of capacity for trade unions and anti-trafficking and human rights/migrant rights NGOs in the three countries to work together to address cases of labour exploitation. A 2014 report from the International Trade Union Confederation (ITUC) and Anti-Slavery International[1], found that a lack of awareness of strategies and activities or different ways of working were the main obstacles to trade unions and others building broad national coalitions on workers' rights and human trafficking.

In 2016, a resource guide was developed by the Centre for Research on Multinational Corporations (SOMO) and La Strada International on building civil society capacity in the areas of corporate accountability, human trafficking and labour exploitation.[2] In order to improve the capacity of trade unions, workers' representatives and anti-trafficking NGOs, the project promotes the development of strategies by these stakeholders to tackle, amongst other things, the increasing precariousness of the labour market and improved accountability of businesses. For this it is first of all necessary to increase awareness and understanding of the process of decent work evolving into exploitation, and which legal frameworks can be used to tackle the problem and claim rights.

The project objective therefore was to improve the rights situation on the ground. Firstly, by raising awareness and building capacity among trade unions and labour organisations to help them better identify and reach precarious sectors with low levels of labour organisation. Secondly, the project aimed to raise awareness and build capacity among anti-trafficking NGOS and others to help them identify cases of trafficking for labour exploitation. This requires increased information exchange and referrals of cases of exploitation between relevant stakeholders, such as Labour Inspectorates, trade unions and relevant NGOs.

Thirdly, the project sought to create political will for effective national frameworks for decent work and business and human rights, and their enforcement in Bulgaria, Poland and Romania. This was done by engaging a broader group of governmental actors in training and stakeholder group meetings.

1 RACE in Europe project
2 http://lastradainternational.org/lsidocs/3227-Resource%20Guide%20Egnaging%20the%20Private%20Sector%20to%20End%20Human%20Trafficking.pdf

For each of the countries – Poland, Bulgaria and Romania – the context of human trafficking and labour exploitation was mapped through field visits in 2017, and desk research and analyses in 2017-2018. In 2017, a working group of relevant stakeholders was set up in all three countries to discuss the state of affairs in their country regarding precarious working conditions, exploitation and business and human rights frameworks. During the course of the project, these groups helped identify barriers to identification of victims and claiming justice, as well as what changes are needed. The stakeholder group sessions also helped improve structural information exchange.

The project further consisted of training and seminars organised in 2017 and 2018, in which trade unions, NGOs and other stakeholders looked at the national situation of labour exploitation and its root causes; as well as at existing national legislation and practices and recent changes in the labour market, and the (in)abilities of labour unions and other stakeholders to address these.

In September 2018, the final findings were presented and verified at a conference in the Netherlands. This report contains recommendations for policy and practical changes that were formulated as a result of the project activities, as well as the conference findings.

1.2 Focus, methodology and definitions

This report is the result of mapping, research, capacity building and other actions undertaken in Poland, Bulgaria and Romania in the period 2016-2018 within the framework of the Rights at Work project. The mapping included online research and face-to-face interviews with local partners, and through them other experts and authorities. Fact-finding missions took place to map labour rights infringements, and to identify current gaps in the legal protection framework and its enforcement.

These legal protections included International Labour Organization (ILO) standards, Organisation for Economic Cooperation and Development (OECD) complaint mechanisms within National Contact Points, EU social rights and corporate laws, and due diligence procedures. At the initial stages it was thought that opportunities could be explored to use the current business and human rights framework to change practices and provide access to justice for victims of labour exploitation, including lodging complaints. This proved too difficult, given challenges faced by national actors on the ground in identifying victims and organising workers in precarious and exploitative working conditions. In particular in Bulgaria and Romania, much action is still needed to raise awareness on the issue and convince stakeholders that serious forms of labour exploitation are occurring within the country, and that both nationals and migrant workers are vulnerable.

Migrants and refugees

Policies, academic literature and the public debate often differentiate between migrants and refugees, between forced and voluntary migration. This forced/voluntary dichotomy identifies refugee protection offering asylum to political migrants, and at the same time delegitimises and criminalises most livelihood and economically motivated forms of movement. These labels have major influences on how people are treated by authorities. In order not to fall into the forced/voluntary dichotomy and to underline the complexity of the experiences of people who are migrating, this report uses the term ‘migrant’ to refer to all those who have left their country.

Legal terminology – modern slavery versus human trafficking and forced labour

Labour exploitation of persons has existed in different forms since history. Despite slavery being outlawed in most countries, severe forms of labour exploitation continue to remain. Persons are exploited for their labour and experience a series of rights violations, ranging from restriction of movement and confiscation of pay, to violence and abuse.

Currently many refer to such situations as modern slavery, which is a plain English term. It is not a legal definition, although some countries, such as the UK, US and Australia, have adopted legal acts that refer to modern slavery. Countries use different legal defininitions and terminologies. 'Modern slavery' should be seen as an umbrella term including human trafficking, foced labour, debt bondage or bonded labour, exploitation of children and child labour and forced marriages.[3] Within this publication reference is mainly made to the legal terms of human trafficking and forced labour, in line with available legislation and terminology used in Poland, Bulgaria and Romania.

- **Human trafficking** – involves transporting, recruiting or harbouring people for the purpose of exploitation, using violence, threats or coercion.
- **Forced labour** – any work or services that people are forced to do against their will under the threat of some form of punishment.
- **Debt bondage or bonded labour** – the world's most widespread form of slavery, when people borrow money they cannot repay and are required to work to pay off the debt, then losing control over the conditions of both their employment and the debt.
- **Descent-based slavery** – where people are born into slavery because their ancestors were captured and enslaved; they remain in slavery by descent.
- **Child slavery** – many people often confuse child slavery with child labour, but it is much worse. Whilst child labour is harmful for children and hinders their education and development, child slavery occurs when a child is exploited for someone else's gain. It can include child trafficking, child soldiers, child marriage and child domestic slavery.
- **Forced and early marriage** – when someone is married against their will and cannot leave the marriage. Most child marriages can be considered slavery.

Source: Anti-Slavery International

The project and this report do not focus exclusively on severe forms of exploitation such as human trafficking and forced labour, but take into account the broad spectrum of labour relations in criminal, labour and corporate law, and in particular the role of trade unions and anti-trafficking NGOs and migrant support groups in Poland, Romania and Bulgaria.

3 Source: Walk Free Foundation, https://www.walkfreefoundation.org/understand/

2 Legal context[4]

According to the ILO, "at any given time in 2016, an estimated 40.3 million people were in a situation of modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage."[5] If these estimates are correct, this means that there are 5.4 victims of modern slavery for every 1,000 people in the world. According to the ILO, "around 16 million people are exploited in the economic sectors of domestic work, construction and agriculture, 4.8 million are in forced sexual exploitation, and four million in forced labour imposed by state authorities. Women and girls are disproportionately affected by forced labour, accounting for 99 per cent of victims in the commercial sex industry, and 58 per cent in other sectors." Often, but not always, the victims of labour exploitation are migrants.

Article 5 of the EU Charter of Fundamental Rights mentions that: no one shall be held in slavery or service; that no one shall be required to perform forced or compulsory labour, and that trafficking in human beings is prohibited. Article 31 of the Charter stipulates that all workers have the right to 'fair and just' working conditions. Formally, 'severe labour exploitation' refers to all forms of labour exploitation that is criminal under the legislation of the member state in which the exploitation occurs. Human trafficking and forced labour are severe forms of labour exploitation, and in most EU countries only these two forms of labour exploitation are criminalised.

It is generally recognised that bad working conditions can lead to labour exploitation, and that human trafficking and forced labour overlap. They find their root causes in economic realities such as profit maximisation, poverty, flexible labour relations and/or gender discrimination. The private sector plays a distinctive role in creating and maintaining working conditions, from decent through to bad conditions that can degenerate into exploitation.

Laws and regulations aimed at improving labour conditions and tackling exploitation have developed over the past 100 years in different contexts. However, there is not one internationally agreed definition of labour exploitation. Human trafficking and forced labour, which both contain exploitation in their definition, are currently regulated through different international laws and protocols. This is relevant to this project in that trade unions, NGOs and migrant organisations refer to different sets of laws and regulations, which has an impact on their identification of victims and the remedies those victims are offered. The section below briefly outlines the main legal frameworks referred to by practitioners today.

4 This chapter is based on the publication - Engaging the Private Sector to End Human Trafficking: A Resource Guide for NGOs, October 2015. Authors: Suzanne Hoff (La Strada International), Katrin McGauran (SOMO).

5 International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage,* September 2017, https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm

2.1 Legal definitions

Human trafficking definition

In the anti-trafficking field researchers, international institutions and NGOs generally use the UN definition of human trafficking, which is laid down in the UN (Palermo) Protocol of 2000,[6] and referred to in European legislation such as the Council of Europe Convention on Action against Trafficking in Human Beings of 2005, and the EU Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims of 2011.

According to this definition, human trafficking involves the movement of a person, often but not always across international borders, for the purpose of exploitation, which can include forced labour. The Palermo Protocol definition emphasises three elements of human trafficking and various forms of coercion:

1. **Activities**, including each phase of the trafficking cycle, namely recruitment, transportation, transfer, harbouring or receipt of a person.
2. **Means**, including the threat or use of force, deception, abduction, coercion, fraud, threats and abuse of power or of a position of vulnerability.
3. **Purpose**, which is exploitation, including forced labour, slavery and servitude.

An important aspect of human trafficking is the intended purpose: even if the purpose, that is the labour exploitation itself, has not occurred yet, trafficking can be found and prosecuted when it is clear that the intended purpose is exploitation. Trafficking has thus been summarised as, "a process of bringing someone into a situation of exploitation, a series of actions with the final purpose being a form [of] exploitation (such as forced labour)."[7] Not all exploitation is trafficking. Exploitation is not specifically defined in the Protocol but stipulated to include, at a minimum: "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

The Protocol distinguishes between trafficking in children (under 18 years of age) and adults. The recruitment and movement of a child for exploitation by a third party is considered to be "trafficking in persons" even if it does not involve the illicit means identified in the definition. The Protocol also explains that, "the consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant where any of the means set forth [above] are established."[8]

Although the Protocol definition has been widely embraced by member states and the international community, it has become evident that questions remain about the practical

6 "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations convention against transnational organised crime, United Nations, 2000, http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx

7 Skrivankova, K., *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation,* 2010, Joseph Rowntree Foundation, http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf , p. 8.

8 Article 3b of the Palermo Protocol

application of the legal definition, especially as exploitation is not further defined.[9] An UNODC Issue Paper states: "The potential breadth and narrowness of the definition has raised several issues to which member states have taken quite different positions. Those who support a conservative or even restrictive interpretation of the concept of trafficking consider that too wide a definition may encompass practices that do not meet the high seriousness threshold expected of 'trafficking'. Those who advocate for a more expansive interpretation consider that too narrow an understanding of 'trafficking' may impede investigations, prosecutions and convictions related to practices that should fall within this term – or indeed operate to exclude such practices altogether."[10]

Forced labour definition

The internationally recognised definition of forced or compulsory labour can be found in the Forced Labour Convention of ILO Convention No. 29 (1930). According to Article 2.1 of this Convention, forced labour is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[11]

The ILO definition includes all work or service, including all types of work, service and employment, regardless of the industry, sector or occupation within which it is found, and encompasses legal and formal employment as well as illegal and informal employment. The definition further refers to any person; to adults as well as children, regardless of their nationality, and it is considered irrelevant whether the person is a national of the country in which the forced labour case has been identified or not.

In 2005, the ILO gave guidance on the interpretation of the definition of forced labour "and pleaded for a broad application including situations in which a person cannot freely leave a job."[12] The ILO interprets the term 'offered voluntarily' as including workers' freedom to leave their employment at any time, and specifies that a denial of this freedom includes false promises made by an employer or recruiter in order to induce a worker to take a job that he or she would not otherwise have accepted.[13] Furthermore, the involuntariness of forced labour relates to the freedom of choice or consent, the realities of which, "pose difficult questions when trying to objectively evaluate an individual's labour situation."[14]

9 "Despite the absence of an international legal definition including in the Protocol itself – the concept of exploitation as it relates to trafficking appears to be broadly consistent with its general meaning of one person taking unfair advantage of another person, their vulnerability or their situation. The core essence of trafficking-related exploitation is accepted to apply to both sexual exploitation and exploitation of another person's labour. However, there is much less certainty at the edges, particularly in relation to the parameters of the concept; the scope and substance of individual practices deemed 'exploitative'; and the criteria for determining other practices that could or should be included."

10 UNODC, Issue Paper, The concept of Exploitation in the Trafficking in Persons Protocol, 2015 https://www.unodc.org/documents/congress/background-information/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf

11 See Article 2 of the Convention at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

12 Jägers & Rijken, *Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations*, Northwestern Journal of International Human Rights, Volume 12, issue 1, 2014, http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1167&context=njihr, p. 49.

13 ILO, *Strengthening Action to End Forced Labour*, Report IV(1), 103rd Session, 2014, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_217752.pdf, para 20.

14 Skrivankova, K. *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*, 2010, Joseph Rowntree Foundation, http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf, p. 6.

Overlaps and differences in the trafficking of human beings and forced labour definitions

In the Protocol of 2014 to the Forced Labour Convention, the ILO explicitly stated that trafficking for forced or compulsory labour is included in the Convention's definition of forced labour,[15] so there are clear overlaps but also differences in legal definition. In essence, according to the ILO definition, persons are in a forced labour situation if they enter work or service against their freedom of choice, and cannot leave it without penalty or the threat of penalty. This does not have to be physical punishment or constraint; it can also take other forms such as the loss of rights or privileges.[16] This is more or less similar for people in a human trafficking situation, where the definition includes the threat or use of force, deception, abduction, coercion, fraud, threats and abuse of power or of a position of vulnerability.

Further, both definitions focus on the exploitation of others. For both definitions the consent or voluntary agreement of a person is irrelevant if that person cannot leave the employment, or did not consent to the specific conditions of the employment/services to be offered.[17]

Current differences in the definitions, and in particular their interpretation, relate to exploitation and recruitment. The human trafficking definition clearly defines the element of recruitment, transportation, transfer, harbouring or receipt of a person, which the ILO convention does not. This is because the ILO does not consider it relevant how a person ended up in a forced labour situation. However, it could be argued that in practice people in forced labour have also been somehow recruited and transferred. "Hence, a person who moved away from his or her place of origin, and was recruited at some point into coercive labour or service, would be called a forced labour victim. At the same time, he or she is also a victim of human trafficking."[18]

Another distinction – not in the legal definition but in the applied ILO definition of forced labour, for instance in data collection – is that the ILO classifies forced labour in three main categories or forms: forced labour imposed by the state, forced labour imposed in the private economy for sexual exploitation, and forced labour imposed in the private economy for labour exploitation.[19]

Although the ILO in its interpretation of forced labour generally adopts a broad definition of the term that includes human trafficking, not all forms of human trafficking (such as, for example, the removal of organs) actually qualify as a form of forced labour. According to the ILO, the ILO Forced Labour Convention complements the Palermo Protocol, but states that the latter is more specific on forms of coercion as well as exploitation: *"While forced labour according to the ILO Forced Labour Convention (No 29) includes any work or service – be it legitimate or not – the Palermo Protocol distinguishes between forced prostitution and forced*

15 See Article 1(3) of the Protocol at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

16 International Labour Office. *Combatting Forced Labour: a Handbook for Employers and Business*. Geneva: ILO, 2008.

17 "Even if a worker entered a labour agreement voluntarily, his or her consent becomes irrelevant if coercion or deception was used (ILO, 2005b). Beate Andrees/ILO, *Forced Labour and Trafficking in Europe: how People are Trapped in, Live Through and Come Out*, 2008, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf

18 Andrees, B./ILO, *Labour and Trafficking in Europe: how People are Trapped in, Live Through and Come Out*, 2008, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf, p. 2.

19 ILO, A global alliance against forced labour. *Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*. 2005, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf, p. 10.

labour. It also lists particular forms of exploitation such as serfdom, debt bondage and slavery-like practices that are also covered under Convention 29."[20]

As such, the ILO stresses that not all forced labour is the result of human trafficking, and that not all human trafficking-related activities necessarily result in forced labour.[21]

The differences in definitions of human trafficking and forced labour in international law are not based on experiences from practice, but rather can be explained by the historical development of the human trafficking and forced labour discourses. The fight against human trafficking primarily originated from the fight against trafficking for sexual exploitation, and was later broadened to include all regulated and unregulated economic sectors. The authorities and legal frameworks dealing with human trafficking were therefore originally linked to women's rights and criminal law and relevant state (law enforcement) authorities. The fight against modern forms of forced labour is closely related to the trade union movement, and relevant legal frameworks are thus related to labour rights and relevant state authorities.

Although international definitions are in place, the crimes are not well or uniformly understood, which also negatively impacts on criminal justice responses.

National legislation

National systems also interpret international definitions differently, or fail altogether to implement international frameworks. Given that the law is enforced mainly at the national level, national definitions are important in the fight against labour exploitation. National laws might fail or inadequately define exploitation according to international standards. As in international law, in most countries exploitation is not defined in national law, and is not a separate crime. It is only partly defined under human trafficking laws. The absence of clear definitions in national legislation (both of exploitation and of stipulated forms of exploitation) is seen as part of the problem, providing individuals with a measure of interpretative discretion that can lead to inconsistency. In practice, culture and national context (for example religious beliefs, ethnicity of victim, etc.) may impact on how different forms of exploitation (and thereby the purpose element of the definition) are understood and applied. There is a risk that such approaches result in differing applications of criminal justice standards.

The consequence of national legal differences is that thresholds for a case to amount to human trafficking can differ considerably from one jurisdiction to another. Many practitioners noted that, even with the help of clear legal definitions, it is often difficult to distinguish human trafficking from forced labour or other related crimes. Moreover, indicators identified for situations of forced labour, human trafficking and/or severe labour exploitation are often the same. They refer to the abuse of vulnerability; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions and excessive overtime. Irrespective of the form of exploitation involved, trafficking and forced labour cases are challenging to investigate and prosecute. *See individual country chapters for details of national legislation in place.*

20 Beate Andrees/ILO, *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, 2008, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf

21 International Labour Office. *Combatting Forced Labour: a Handbook for Employers and Business*and, 2015, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm

From strict legal definitions to recognising a continuum of exploitation

Central to the definition of forced labour and that of trafficking in human beings is the attempt to define exploitation, which takes numerous forms depending on the context. The question of when "decent work evolves into a form of forced labor and under what conditions this can be considered to fall in the scope of human trafficking" is thus not just also important in academic debates, but also for practitioners who provide legal support for clients attempting to gain justice after experiencing exploitation. Next to debating legal definitions, practitioners and researchers advocate for an understanding of forced labour in a continuum of exploitation:

"The evidence suggests that forced labour has to be understood as a process and not as a static relationship between workers and employers. The vulnerability of migrants often increases over time as they are under pressure to repay their debts, or as they have been subjected to immigration controls and extortion from criminal networks. Moreover, employers often 'test' the resistance of workers before they squeeze them into more exploitative situations. One could think of this process [as] an ever narrowing labyrinth where the decision- making power of the worker is surrendered in the end."[22]

The concept of a continuum of exploitation is an outcome of the difficulty in legal proceedings to distinguish between coercion and consent in labour cases brought before court. This analysis can also be applied to forced labour situations that are an outcome of trafficking, with decent work on the one end of the spectrum and forced labour on the other end, and different 'modes of coercion' in between the various stages of exploitation. The continuum of exploitation "captures not only the complex combination of situations that exist between decent work and forced labour (an environment that permits the existence of sub-standard working conditions), but also an individual work situation, as it evolves over time." Understanding exploitation in a continuum also addresses the shortcomings of strict legal definitions that fail to take into account economic circumstances in defining freedom, and is more true to reality in that it exposes the "vulnerability [of a worker] that can be abused to obtain consent, and de facto negate the principle of freedom of choice, absence of which is one of the elements of forced labour."[23]

Most importantly, however, understanding exploitation in a continuum helps to address forced labour situations, because the analysis calls for a number of conclusions in the field of prevention and identification. For instance, it is important to recognise the importance of labour and migrants' rights organisations in the fight against human trafficking and forced labour, at the stages of prevention, identification and access to remedy.

Promoting a human rights-centred approach, anti-trafficking practitioners have called not only for effective criminal law responses to anti-trafficking cases to enable the prosecution of perpetrators, but also for adequate labour law responses to cases that might amount to forced labour or human trafficking.

22 Beate Andrees/ILO, Forced labour and trafficking in Europe: how people are trapped in, live through and come out, 2008, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf, p. 22.

23 See Skrivankova, K., Between Decent Work and Forced Labour: Examining the Continuum of Exploitation, 2010, Joseph Rowntree Foundation, http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf

3 European operational context

Since the transition from socialism to capitalism, trade unions in Central and Eastern European (CEE) countries have faced challenges through restructuring and renegotiating conditions with employers and the state. This is visible in the declining density of trade union membership, with 19.8 per cent in Bulgaria,[24] 12.5 per cent in Poland[25] and between 32 and 50 per cent[26] in Romania.

Labour exploitation is found most in situations of temporary or seasonal contracts, agency work and other forms of outsourced work, which provide employers with buffers against legal liability for the employment relationship and worker engagement in collective bargaining. Traditional unions focus on sectors where union density is highest, but often fail to address labour exploitation in the most precarious sectors, where workers enjoy limited or no social benefits or social security, low wages and high risks of occupational injury and diseases.

At the same time, the internal market project has created the principles of freedom of movement and freedom of establishment, which have increased opportunities for employers to work and employ people in a cross-border context, whilst the coordination of social aspects of this employment (minimum wages, holiday and sick pay, social insurance, contractual rights) lack European coordination and enforcement.

The larger number of migrants entering Poland, Bulgaria and Romania has presented challenges to legal protection frameworks in all three countries. Even though in comparison with other European countries the number of migrants is still low, in particular in Poland a large increase in Ukrainian and other non-European migrant workers has been noticed.

While European migration laws have become very strict, labour markets in Europe increasingly rely on temporary and undocumented workers, and in the three countries new policies and legalisation have eased migration for employment for third country nationals (non-European citizens, who do not enjoy the right to free movement, and who need a work visa or permit to work in an EU country), in particular from nearby non-EU European countries, as well as from Asia. Their work visa and residence status is often tied to their employer, so they become undocumented if made redundant or forced to leave an exploitative job. Migrant workers often toil in low wage, informal sectors that are not well-protected, due to a lack of fair working conditions. Excessive recruitment fees and costs of working abroad can force them to endure poor conditions to repay this debt. Recent studies have noted that migrants in general are prone to labour exploitation, and that there are serious shortcomings in the legal protection frameworks as well as in identification and access to justice. This has been recognised by numerous government institutions and NGOs, but general awareness among important stakeholders such as trade unions and NGOs is still low.

24 According to ICTWSS statistics from 2008

25 OECD statistics from 2012

26 The unions in Romania estimate current density at 48 per cent to 50 per cent, while a study published by the employers' association UGIR-1903 in 2005 calculated that 44 per cent of employees were union members in 2002.

Vulnerable sectors and people

Human trafficking and forced labour can occur in both regulated and non-regulated labour sectors, but some sectors are more vulnerable than others for different reasons. The ILO has identified the following sectors as vulnerable: labour intermediaries or recruitment agencies (cross-sectoral); the sex industry; agriculture and fishing; construction; mining and quarrying; domestic and care work; textiles and garments; food manufacturing, processing and packaging; hotel and services industry; and market training and illegal activities. Similar to the ILO, this project identified sectors particularly vulnerable to labour exploitation in each country, in particular construction, agriculture, the hospitality and garment industries, as well as the non-regulated sectors: domestic work and the sex industry.

Certain groups are particularly vulnerable to severe forms of labour exploitation. These include migrants (including refugees, those on the move and those settled), minority groups and other vulnerable groups such as homeless people, undocumented people, or those in irregular work situations such as domestic or sex work. In this report special attention is given to new migration flows and the vulnerability of migrant groups. Not much information could be obtained about the number and situation of undocumented workers in the three countries.

In all three countries there are specified legal protections and support services for victims when they are identified as having been trafficked for labour or sexual exploitation. When cases remain in the realm of labour law violations, however, migrant workers fall outside the realm of protection. This issue is further highlighted in the following country reports.

4 Summary and conclusions

Despite differing migratory patterns and economic situations within each national context, many similarities can be seen in the bottlenecks to tackling labour exploitation in Poland, Bulgaria and Romania. Our findings reveal the following:

Lack of awareness about labour exploitation occurring within each country

Bulgaria, Romania and partly Poland are known as the main countries of origin for victims of trafficking and labour exploitation in Europe. Therefore, much focus is still put on nationals trafficked to and exploited in foreign countries, and prevention work in particular targets nationals who might want to travel abroad. However, much less attention has been paid to addressing and preventing labour exploitation within countries' own borders. During meetings with stakeholders for this project, it was apparent that stakeholders repeatedly wanted to speak about exploitation happening elsewhere, and doubted or wanted proof of exploitation of workers in general, being not very convinced or aware of the possibility that labour exploitation was taking place in their own country.

Increase in migrant workers, but lack of attention to their vulnerability

All three countries are seeing an increase in migrant workers coming to the country, in particular migrations on temporary visas from nearby European non-EU countries and Asia. There have also been increases in asylum seeker applications, including from Syria, Afghanistan, Iran, Iraq and Pakistan. However in comparison with other European countries, these groups are relatively small. Further, there are migrant communities in the three countries that established themselves earlier, such as the Chinese community in Bulgaria and Vietnamese in Poland.

Due to emigration flows and the departure of many highly skilled people from all three countries (for example four million Romanians are estimated to have left over the last three decades), there is huge demand for workers in several labour sectors. The aging of the population and mismatch between supply and demand also play a role, and a recent trend has seen recruitment agencies set up to recruit workers from abroad. For example, it is stated that over one million Ukrainians currently work in Poland, mainly on temporary visas and often without a formal labour permit or adequate contract. There are also migrant workers from Belarus, Moldova and Russia in the country, and increasingly labour gaps are also being filled by workers from Asia, including those from India, Pakistan, Nepal and Uzbekistan.

In all three countries, the level of undeclared work remains high and the minimum wage – although increased – remains low in comparison to other European countries. Moreover, many workers receive remuneration well below the minimum wage. Although in Poland civil contracts should always pay at least minimum wage, the Romanian parliament passed a law in 2018 according to which employers no longer have to pay minimum wage for non-EU workers, even though the minimum wage in Romania is already one of the lowest in the EU.

This and other measures of course have implications for working conditions. Often workers, in particular self-employed and seasonal workers, do not have access to a decent income or living conditions, or to adequate unemployment protection.

Difficulties with interpretation and implementation of legislation

All three countries comply with international legislation related to human trafficking and forced labour. Nevertheless, this research found that interpretation of definitions and legislation is very much dependent on stakeholders and national contexts, which also impacts on how different forms of exploitation are understood and applied. Even for high-level experts and practitioners, it remains difficult to distinguish between cases of forced labour, human trafficking or serious forms of exploitation. These crimes are not well or uniformly understood. Severe forms of labour exploitation might be regarded as violations of labour law instead of as a serious crime. Stakeholders have identified that the need to prove the use of force, as well as the other elements of human trafficking, and the lack of stand-alone offences for forced labour or other severe forms of labour exploitation – alongside a lack of a common definition for labour exploitation – has contributed to difficulties in getting severe forms of labour exploitation adequately prosecuted under criminal law.

In addition, there are many gaps related to the implementation of legislation, leading to insufficient support for vulnerable groups and identified victims, who are not protected adequately under the legal framework. There are also barriers to access to justice, such as compensation and back wages.

Need for structural and systematic cooperation among – and engagement of – all relevant stakeholders

Relevant stakeholders are active on the issue of human trafficking and labour exploitation in Poland, Bulgaria and Romania. National governmental bodies and frameworks are set up, among which the Labour Inspectorate, law enforcement, lawyers, NGOs and health support actors are the most relevant. Their tasks are described either in a National Action Plan or a National Referral Mechanism, although Poland does not have a National Referral Mechanism formally in place yet. The current Polish coordination working group has been dissolved to be replaced by a new body in 2019. What this new body will look like is not yet fully clear.

Trade unions, alternative workers' rights organisations and migrant rights organisations are often not part of the formal National Referral Mechanism or the institutional framework addressing the issue of human trafficking or forced labour, even though they play an essential role in the identification of vulnerable workers and identifying cases of severe forms of exploitation, including human trafficking.

Finally, agreement should be reached on who should take action when cases of exploitation are identified: who files the complaint, who contacts the employer etc. Right now this is rarely defined, and is seldom part of any referral or cooperation mechanisms.

Difficulties in engaging trade unions to support migrant workers

In central and eastern Europe the heyday of trade unions is over and membership is in decline, with many now facing financial and other difficulties. Unions do not have much access to unregulated economic sectors, and already have difficulties in reaching out to workers in regulated sectors who work for small companies, for instance. They are overloaded with general economic reform issues and public protest, as seen in particular in Romania, and have limited time to organise and represent migrant workers. In addition, trade unions mainly support union members, and cannot do much for undocumented migrant workers, due to capacity and mandate limits.

Although contact with trade union representatives was established in all three countries it has been difficult, in Poland in particular, to engage them actively in training and stakeholder groups, or to agree on further common actions. This is despite the fact that trade unions clearly recognise the need to support migrant workers more and the need to cooperate with other actors.

Insufficient labour inspection capacity and absence of a clear 'firewall'

Labour Inspectorates are crucial in enforcing labour standards and enacting investigations and prosecutions. But there is a clear lack of capacity and thus controls remain rare, including in vulnerable sectors such as agriculture and construction. Inspections are virtually non-existent in domestic work. Moreover there is no clear firewall between immigration control and control around whether decent working standards are applied. In Poland, Romania and Bulgaria Inspectorates are responsible for monitoring both working conditions and irregular employment, but when labour authorities prioritise checking workers' immigration status, this diverts attention away from working conditions. More focus should be put on ensuring that workers can safely report and complain and that effective complaint mechanisms are in place.

Lack of identification of cases

The research clearly reveals that in Poland, Bulgaria and Romania – but also in other parts of Europe – identification of human trafficking and labour exploitation is low. Estimates of modern slavery, forced labour and human trafficking are very high and not comparable with actual registration figures. We therefore continue to see 'just the tip of the iceberg'. When cases are identified it remains very difficult to formally identify workers as victims of trafficking or severe labour exploitation. Prosecution of labour exploitation often fails.

Serious difficulties with prosecution of perpetrators

There are serious gaps in the prosecution of perpetrators of human trafficking and labour exploitation. It requires much investment, resources and capacity to prosecute exploiters, and it is often hard to find evidence to prove and ensure successful investigation. Cases are often stopped due to a lack of evidence. Supply chains have become so long that it is almost impossible to identify who is employing who, and to ensure that the real exploiters are held liable, not just individuals and small private sector actors. Businesses are often not being held accountable for labour rights infringements. In Bulgaria for example, companies cannot be prosecuted, only individuals. Of the three countries, only Poland has a special National Action Plan on business and human rights. In general, there seem to be few private sector corporate social responsibility initiatives on human trafficking, labour rights or similar topics, and no legal liability regarding exploitation in supply chains – although this might be changing in the near future.

5 Common recommendations

Based on the Rights at Work assessment and activities, the following recommendations can be made:

1 Continuous national debate and exchange to discuss gaps and possible solutions related to identifying and prosecuting human trafficking, forced labour and labour exploitation should be ensured.

2 More prevention strategies are needed to address all severe forms of domestic labour exploitation and to raise awareness amongst all relevant stakeholders, including about the vulnerable position of (undocumented) migrant workers.

3 Revision of legislation should be considered to ensure that forced labour and other forms of severe labour exploitation can be better prosecuted under criminal law; harmonised interpretation of national legislation should be promoted too.

4 Consistent and adequate government procurement policies should be in place, and governments should be transparent about and critically assess their own supply chains and services to ensure prevention of forced and exploitative labour.

5 Additional care should be taken in monitoring and preventing human rights abuses by business enterprises owned, controlled or subcontracted by the state; governments should refrain from cooperation with countries that make systematic use of forced labour.

6 Visa schemes and (bilateral) programmes and agreements to ease visas for migrant workers and/or increase access to employment should include clear monitoring mechanisms to prevent exploitation of (migrant) workers.

7 Control mechanisms should be set up to monitor business compliance with labour standards and human rights and make the private sector more accountable; incentives should be provided for companies that comply, with sanctions for those that do not respect human rights.

8 More access to employment and integration in the labour market should be ensured for all workers, including by the prevention of discrimination of workers and establishment of unemployment protection to reduce workers' vulnerability.

9 Decent working conditions including decent remuneration should be promoted, and informal and unregulated work should be brought within the protection of labour laws. Labour rights should apply to all workers, irrespective of migration and residence status.

10 There is a need to increase migrant workers' awareness of their rights by means of information campaigns organised by the state, public institutions, trade unions and NGOs, via social media and institutions in countries of origin, transit and destination of migrants.

11 Workers should be involved in prevention initiatives to address exploitation and human trafficking (e.g. worker-led monitoring). Migrant workers should be engaged to share their experiences in their country of origin.

12 The identification of severe exploitation cases should be increased, and better enforcement of labour standards ensured by sufficient monitoring capacity of Labour Inspectorates. Increased workplace inspections in vulnerable sectors and outreach to vulnerable workers are needed.

13 A firewall should be in place: inspections of violations of labour laws should be delinked from the control of residence status of workers, so that workers have an opportunity to report exploitation without fearing arrest and deportation.

14 Safe reporting and adequate complaint mechanisms are required to encourage victims to report cases of labour exploitation. It should become easier for workers to file complaints.

15 Increased awareness and information is needed about the origins of products and services to enable customers to make informed decisions about their purchases. Products and services made without exploitation and human trafficking should be promoted.

16 Improved criminal justice responses are needed to reduce the number of ineffective investigations that do not result in prosecution. Sentence convicted perpetrators to penalties proportionate with the severity of the crime.

17 Promote multi-disciplinary approaches and cooperation, stimulating engagement of trade unions and migrant rights groups and the private sector in national programmes and frameworks. Ensure clearly defined roles and agreements between all relevant stakeholders to address the issue of labour exploitation.

18 Increase training for prosecutors and judges on the severity of the crimes of human trafficking and forced labour, as well as on the rights of victims and the need for effective access to remedies. Also increase training of law enforcement officials on investigating and prosecuting labour trafficking cases and financial investigations.

19 Improve training and efforts among all relevant stakeholders to identify victims proactively, particularly among unaccompanied children, migrants/refugees and other vulnerable groups.

20 The dialogue between workers, employers and workers' support initiatives should be improved. Trade unions should make workers more aware of what unions can do to defend their rights and encourage migrants to join them, since they have the legal means of protecting workers. Trade unions should be part of programmes and the institutional framework addressing human trafficking, forced labour and other forms of labour exploitation.

21 Trade unions and alternative workers' organisations should increase access for workers in all vulnerable sectors, and raise more awareness of and advocate for (undocumented) migrants workers' rights and promoted human rights, equality and labour standards for all workers.

22 All victims of labour exploitation, including victims of human trafficking and forced labour, should have access to remedies through judicial, administrative and legislative means. Prosecutors should be encouraged to request restitution during criminal cases and to systematically inform victims of their right to pursue civil suits against their traffickers.

23 Improve central operational coordination by ensuring an adequate coordination structure involving all relevant actors with agreements on responsibility.

24 Compile and provide comprehensive and coherent statistical data on human trafficking, forced labour and other forms of labour exploitation, including on investigation, prosecution and adjudication of human trafficking cases.

25 Ensure adequate funding for NGOs and for implementation of policy actions and measures taken, including for the implementation of National Action Plans on human trafficking.

In focus: Poland

1 National context

This chapter describes the political, social and economic situation in Poland, as well as access to employment and demand for workers related to migration to the country. In addition, we review the vulnerability of workers and of different labour sectors.

1.1 Political and Social situation

In November 2015, Poland's far-right Law and Justice party came to power by forming a majority government, after winning both the presidential and parliamentary elections that year. Many people had voted for the party as it promised welfare benefits and a fight against low paid and precarious employment. It pledged "not to open Poland's doors to refugees from Middle Eastern and African countries."[27] The party further strongly promoted traditional family and Catholic values.

From the moment the new government came to power – having the absolute majority in both the parliament and the senate – it has used its position to carry out far-reaching legislative changes, exerting political control over the judiciary, NGOs and the media,[28] undermining democracy and the protection of human rights. For example, the government has continuously discouraged efforts to promote gender equality or combat violence against women,[29] despite the previous government's ratification of the Council of Europe Convention on violence against women (Istanbul convention).[30] Women's rights organisations conducting information and education activities related to sexual and reproductive health, anti-violence and non-discrimination have faced repression,[31] or have been targets of campaigns demonising their work. Women and girls continue to face systemic barriers to accessing safe and legal abortions. The government has resisted the EU scheme for resettlement of refugees and opposed the reception and protection of refugees in the country.

As a result, national and international criticism has been raised by NGOs,[32] the Polish Ombudsman, the National Council of the Judiciary and other authorities, as well the European Commission.[33] Over the last three years people have been out on the streets,

27 https://polandin.com/40483127/poland-refuses-to-back-un-document-on-refugees

28 J. Kajta & A. Mrozowicki, FocaalBlog, *The New Polish Parliament: Between de Right and the radical Right*, 19 November 2015, http://www.focaalblog.com/2015/11/19/justyna-kajta-adam-mrozowicki-the-new-polish-parliament-between-the-right-and-the-radical-right / (11 April 2018)

29 https://www.hrw.org/report/2019/02/06/breath-government-my-back/attacks-womens-rights-poland

30 Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence, CETS 210. Since the new government has come to power, there have been calls for Poland's withdrawal from the convention, including draft legislation to do so. This was later dropped, however calls for withdrawal remain. See http://www.intellinews.com/domestic-violence-treaty-rattles-governments-across-eastern-europe-142498/

31 Szuleka M. *First Victims or Last Guardians? The Consequences of Rule of Law Backsliding for NGOs: Case studies of Hungary and Poland*, CEPS, Brussels, 2018, available online: https://www.ceps.eu/publications/first-victims-or-last-guardians-consequences-rule-law-backsliding-ngos-case-studies (10/05/2018) Helsinki Foundation for Human Rights, Situation of Civil Society Organizations in Poland, 2017 available online: http://citizensobservatory.pl/ustawa/situation-of-civil-society-organisations-in-poland/ (10/05/2018)

32 https://www.amnesty.nl/actueel/poland-the-power-of-the-street

33 Amnesty International, annual report 2015/2016

protesting against the government's measures.[34] NGOs addressing social issues such as human trafficking and migrant protection often lack access to governmental funding, and struggle to survive. Government funding programmes have been cut, stopped or frozen, including funding for legal support, professional counselling, psychological assistance and other services offered by NGOs.[35] The government also reduced financial support for the National Action Plan and policies on combating human trafficking. According to NGOs, this demonstrates a lack of political will to seriously address human trafficking.[36]

However, according to the US government, which monitors state actions to confront and eliminate human trafficking globally,[37] the Polish government "fully meets the minimum standards for the elimination of trafficking." According to their report, the Polish government "continued to demonstrate serious and sustained efforts in 2017 by increasing investigations and prosecutions, as well as enhanced penalties for recruiters charging excessive recruitment fees and increased efforts to protect foreign workers." The Polish government did provide 1.1 million zloty (around € 250,000) to two NGOs (PoMOC and La Strada) to run the National Intervention Consultation Center for Victims of Trafficking (KCIK) in 2017. Both organisations also received similar grants for 2018 and 2019, while the government further spent 79,800 zloty (€ 18,500) to train welfare assistance personnel on assisting trafficking victims and witnesses in 2017.[38]

Because of measures taken that undermine the independence of the judiciary system, the European Commission launched an infringement procedure against Poland in 2017.[39] Later, in September 2018, it decided to refer Poland to the European Court of Justice (ECJ)[40]on the grounds that the legislative changes were incompatible with EU law; the Court then issued a temporary ruling[41] which Poland obeyed by re-revising the Supreme Court law to comply with EU demands.[42]

1.2 Economic situation and employment

Poland's economy has performed strongly over the last few years, resulting in increasing economic growth. Poverty has decreased, partly through social government programmes, and a large decrease was also observed in risk factors for poverty or social exclusion. According to Eurostat, this risk declined from 30.5 per cent to 19.5 per cent in 2017, while

34 A. Piela, A. Łukjanowicz: *Islamophobia in Poland*. National Report 2017. In: European Islamophobia Report (EIR). Ed. by E. Bayraklı, F. Hafez. Istanbul, Foundation for Political, Economic and Social Research (SETA), 2018. available online: http://www.nigdywiecej.org/czytelnia/wybrane-materialy/texts-in-english/download/4087-a-piela-a-lukjanowicz-islamophobia-in-poland-national-report-2017-in-european-islamophobia-report-eir-ed-by-e-bayrakl-f-hafez-istanbul-foundation-for-political-economic-and-social-research-seta-2018

35 See SIP report https://interwencjaprawna.pl/en/files/Po-FAMI-raport_ENG.pdf and skype call La Strada Poland, February 1, 2017

36 Fact finding mission Poland, February 2017

37 The Trafficking in Persons Report is a U.S. government tool to engage foreign governments on human trafficking. It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it

38 US Trafficking in Persons report 2018 – Office to Monitor and Combat Trafficking in Persons, US State Department: https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282732 and Interview La Strada Poland, Jan 2019

39 Human Rights Watch report 2017, https://www.hrw.org/world-report/2017/country-chapters/european-union#94880b

40 http://europa.eu/rapid/press-release_IP-18-5830_en.htm

41 https://www.independent.co.uk/news/world/europe/poland-supreme-court-judges-eu-european-court-judge-ecj-a8592136.html

42 https://www.reuters.com/article/us-poland-eu-courts/polish-response-to-ecj-ruling-is-in-the-right-direction-eu-executive-idUSKBN1OH19E

in many EU countries it actually increased.[43] However, large groups of the population still do not profit from this economic growth.

It is estimated that around 17 per cent of Poland's population live below the poverty line.[44] Inequalities sustain, as well as underpaid and unregistered employment. Many work on temporary contracts, which has increased the feeling of economic exclusion. This is despite the fact that the ruling party has stated repeatedly that they are determined "to fight against low paid and precarious employment, in cooperation with trade unions."

Over the last year, the official unemployment rate in Poland has been low, around five to six per cent.[45] Among young people, however, the unemployment rate is much higher, and they struggle to keep long-lasting employment. Estimates in the past revealed that around one third of young workers face so called 'junk contracts' – temporary contracts that do not offer a stable income, a source of long-term financial stability, or any health benefits. While the average salary of Polish citizens has strongly increased – estimated to be around € 900 monthly – the minimum wage is still one of the lowest in the European Union.[46] In September 2018, the Polish government proposed to increase the minimum wage by seven per cent in 2019, bringing it to 2.250 zloty (approximately € 520), which follows an earlier eight per cent increase in 2017.[47]

As for social measures taken by the government, these include the decision to reduce the retirement age from 67 to 60 years for women, and 65 for men. Those with children are paid 500 zloty (about € 120) for the second born child and each child after. These measures have made it easier for people to stop working completely.[48]

1.3 Migrant workers in Poland

Poland's transition from mainly sending Polish migrant workers to other EU countries, to an important destination country for migrating workers from third countries (third country nationals), has been happening quickly, particularly over the last couple of years.[49] In 2011, Eurostat reported that citizens of other countries comprised only 0.1 per cent of the Polish population – then the lowest rate in the EU.[50] Regardless of the government's current anti-immigration rhetoric and action, recent inward migration flows have been large and diverse. Poland has been particularly accepting of migrant workers from former Soviet Union countries, and more recently also from Asia. The number of Asian work permits issued has been rising since 2007. However, only a small group of refugees have been given residence so far, and Poland has not yet accepted any resettlement of refugees residing in other EU countries, regardless of the strong call to do so from the European Commission. *See Section 1.4 below.*

43 https://ec.europa.eu/eurostat/documents/2995521/9310033/3-16102018-BP-EN.pdf/16a1ad62-3af6-439e-ab9b-3729edd7b775

44 The World Data Group defines the poverty line as earning anything below $1.90 per day. Poland's total population is 37.95 million people, which means that there are 6.4 million people in poverty.

45 See https://www.worldbank.org/en/country/poland/overview and https://tradingeconomics.com/poland/unemployment-rate

46 https://borgenproject.org/top-10-facts-about-poverty-in-poland/

47 https://kafkadesk.org/2018/09/25/poland-plans-to-increase-minimum-wage-in-2019-then-what/

48 Information provided by La Strada Poland, February 2019

49 Association for Legal Intervention: *Unprotected – Migrant Workers in an Irregular Situation in Central Europe*, 2014, https://interwencjaprawna.pl/en/files/unprotected.pdf (11 April 2018)

50 http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-12-031/EN/KS-SF-12-031-EN.Pdf

As for migrant workers residing within the country, in 2017 the Ministry of Labour revealed that immigration has increased by 33 – 35 per cent, mostly due to Ukrainian migrants. After Ukraine, migrants have particularly come from Belarus and Moldova. Other large migrant groups are citizens of the Russian Federation and other former Soviet Union countries, as well as Vietnam and China.[51] Migrants also come from other Asian countries. Stakeholders interviewed in 2017 and 2018 named the same dominant migrant groups for the country, for example the trade union OPZZ stated, "Vietnamese people came in the past to study in Poland and remained, they are in particular residing in the city of Krakow."[52] There is a large Vietnamese community in Poland, as well as Filipino and Chinese migrant communities. Poland is also one of the European countries where North Koreans work, *see Section 3: human trafficking and labour exploitation in Poland.*

People from Ukraine, Moldova, Russia, Belarus, Georgia and Armenia often work on temporary work visas. Current non-official estimates about the number of Ukrainian migrants residing in the country differ, but fall somewhere between one and two million people.[53] According to the National Bank of Poland, "about one million foreign workers stayed (and presumably worked, for some time at least) in Poland in 2017 – of which 87 per cent were Ukrainians."[54]

Official data from 2016 shows that 1.3 million residence visas for Ukrainians were granted that year. It is not clear how many of these Ukrainians also obtained a formal work permit and stayed in Poland. Eighty-five thousand Ukrainians were officially registered in Poland at the end of 2016.[55] National data from May 2018 reveals that the number of immigrants remaining legally was 97,000, while an estimated 50,000 – 70,000 more were staying irregularly.[56]

Other stakeholders interviewed reported an increase in Asian people working in the country, including a rapid increase in work permits issued for Asians – see 1.7 below. They believe this to be the result of bilateral agreements with third countries by the Polish authorities, allowing citizens from specific Asian countries to come and work in Poland for a temporary period.[57] However, according to the Ministry of Labour and Social Policy on 16 May 2018, "No bilateral or other agreements have been signed with Bangladesh, India or Nepal with the aim of facilitating their nationals access to the Polish labour market. Neither is the Ministry working on such agreements." The government did state they were working on facilitation for specified professions, regardless of the country of origin of the workers.[58]

51 Association for Legal Intervention: *Unprotected – Migrant Workers in an Irregular Situation in Central Europe,* 2014: http://interwencjaprawna.pl/en/files/unprotected.pdf
52 Interview OPZZ, fact finding mission February 2017
53 Fact finding mission, February 2017
54 https://wiiw.ac.at/#_ftn2
55 Information provided in February 2017 – by Nasz Wybor
56 http://www.udsc.gov.pl/Zestawienia,roczne,233.html
57 AngryWorkersWorld, Libcom.org, *Migration, Refugees and Labour*, 21 February 2016 http://libcom.org/blog/migration-refugees-labour-21022016 (11 April 2018)
58 Information provided by the Association for Legal Intervention (SIP) based on information they requested from the Ministry (Letter of 24 May 2018, no. DRP.IX.4033.8.2018.IW)

1.4 Asylum seekers and recognised refugees

While migration to the country for work has been encouraged for certain groups of foreign workers and those with Polish roots, Poland has been reluctant to welcome more refugees. The rules of the national asylum procedure are regulated by the Act of 13 June 2003[59] on granting protection to foreigners within the territory of the Republic of Poland. Data from 2018 reveals that only 3,360 people received refugee protection status in Poland.[60] This figure – which excludes those who received permanent residence permits – is the lowest rate in the EU.[61] This is partly due to the fact that in 2015 the Polish government withdraw from commitments made under the EU resettlement and relocation scheme[62] and has since refused to accept refugees for resettlement in Poland, as a result of which the European Union started an infringement procedure at the end of 2017.[63]

In December 2018 Poland also refused to endorse the UN Global Compact on Migration. However, that same month it did silently commit – after initially opposing it – to the UN Global Compact on Refugees, which aims to "strengthen the international response to large movements of refugees and protracted refugee situations."[64] Polish NGOs have accused the authorities of preventing asylum seekers at the border with Belarus from entering Polish territory to seek protection. Human rights organisations further frequently report anti-migrant hate speech and growing violence against migrants.[65,66]

In 2017 a total of 5,078 foreigners applied for Polish refugee status. The majority of applicants were from the Russian Federation (70 per cent), Ukraine (13 per cent) and Tajikistan (three per cent). Slightly more than half (57 per cent) applied for international protection in Poland for the first time. Nearly half of those applying for refugee status in 2017 were children. Five hundred and twenty foreigners were granted international protection, mainly again from Ukraine, the Russian Federation and Tajikistan. Two hundred and twenty-seven foreigners were granted a permit for tolerated stay, a subsidiary form of protection introduced in Poland in 2003 when the country prepared for its accession to the European Union in the next year.

These statistics indicate that Poland has not been affected by the influx of refugees that Europe faced in 2015.[67] There are hardly any applications from people from Middle Eastern or African countries, and applications for asylum from Vietnam and China have actually been decreasing.[68] People applying for asylum in Poland are entitled to legal assistance and advice, however according to NGO reports the accessibility of free legal assistance in Poland has decreased over the course of recent years.[69]

59 Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, Journal of Laws 2016, Item 1836.

60 In 2017 there were 3,360 people in Poland who possessed identity cards confirming their refugee status or subsidiary protection https://migracje.gov.pl/statystyki/zakres/polska/typ/dokumenty/widok/mapa/typDokumentu/2,15/rok/2017/?x=0.0915&y=0.9532&level=1

61 P. Pacula, EU Observer, *Poland: No Paradise for Migrants*, 20 July 2015, https://euobserver.com/beyond-brussels/129694 (11 April 2018)

62 Amnesty International annual report 2015/2016

63 http://europa.eu/rapid/press-release_IP-17-5002_en.htm

64 https://www.unhcr.org/towards-a-global-compact-on-refugees.html

65 Human Rights Watch report 2017

66 Helsinki Foundation for Human Rights, Input by civil society to the EASO Annual Report 2017, available online: http://citizensobservatory.pl/ustawa/helsinki-foundation-for-human-rights-commentary-on-rights-of-foreigners-in-poland/

67 http://udsc.gov.pl/en/statystyki

68 Fact finding mission, February 2017 – interview with Ministry of Labour

69 See SIP and Helsinki Foundation's joint report on AMIF funds https://interwencjaprawna.pl/en/role-european-funds-supporting-integration-migrants-poland/

1.5 Demand for workers and access to legal employment

Despite the increase in numbers of migrant workers in Poland, there is still an urgent shortage of labourers – partly as a result of many Polish workers leaving in the past to work abroad. It is estimated that around one million Polish people between the ages of 15 and 24 have migrated to other EU countries, mainly to ensure higher wages.[70] Due to the downward revision of the retirement age and social benefits for families with children, the Polish worker population has further declined. This shortage of workers has strengthened demand for foreign workers, and put pressure on the Polish government to encourage immigration and ease migration and employment procedures for foreign workers.

Since flows of migrants started increasing, new policies and laws have been established relating to their stay and employment.[71] Some of these laws have since been revised, or are no longer in force, such as the 2011 Act on Legislation of Stay of Foreigners, or the first Polish Migration Policy of 2012, which also addressed the issue of immigrants' integration, but was annulled by the government. A planned 'new national migration policy' to be elaborated in 2018 has not yet been adopted.[72] The media has reported that "the government intends to expand the list of countries with privileged access to the Polish labour market from the current six former Soviet states, to include southeast Asian countries such as Vietnam and the Philippines", and that "negotiations were held to conclude a specific agreement with the Philippines to facilitate migration to Poland." Plans to invite more Bangladeshi workers have also been reported. This has, however, not formally been confirmed by the government.

Current Polish legislation grants the following people full access to the Polish labour market:

- Recognised refugees, holders of subsidiary protection and asylum seekers six months from the point of applying for asylum, provided that no decision on asylum has been issued first.
- Spouses of Polish citizens, in possession of a marriage residence card.
- Full-time students and academics (researchers) and graduates of Polish high schools/ universities.
- People joining their relative(s) for family reunification.
- Holders of a Polish Card (Karta Polaka, a card granted to immigrants who can prove their Polish origins).[73]
- Long-term EU residents.[74]

If a decision for granting an asylum status is not reached within six months, asylum seekers can legally work in Poland after obtaining a special document from the Office for Foreigners.[75] In general, foreign workers have to obtain a work permit and conduct a labour migration test, as well as a legal permit to stay. The legality of work depends on the legal permit to stay, if you have a work permit but not a permit to stay, you cannot legally work in Poland.[76] There are many exemptions to this law, especially for seasonal work.

70 https://borgenproject.org/top-10-facts-about-poverty-in-poland/
71 *Unprotected: Migrant Workers in an Irregular Situation in Central Europe*, Association for Legal Intervention, 2014
72 Information provided by the Association for Legal intervention in May 2018
73 https://www.msz.gov.pl/pl/polityka_zagraniczna/polonia/karta_polaka/kto_moze_otrzymac_karte_polaka/
74 Information provided by the Association for Legal Intervention (SIP), May 2018. See also Law: Article 87(2), law on promotion of employment and labour market instruments of 20 April 2004 http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20040991001
75 https://www.pomocprawna.org/lib/i5r5fu/Focus-Report---Asylum-Trends-Poland---Sep-2018-jmj2dcq4.pdf
76 Interview Labour Inspectorate, fact finding mission, February 2018

Simplified procedures for obtaining a work permit in Poland were introduced for citizens of former Soviet Union countries by decree of the Minister of Labour and Social Policy.[77] National citizens of Ukraine, Belarus, Georgia, Moldova, Russia and Armenia have been allowed to work in Poland – initially for up to six months in a year period – based on an employer's statement they can quickly – within a couple of days – obtain a Polish (work) visa. In 2018 the period of work on an employer's statement was extended for seasonal workers only, with the result that these groups can now work for a period of nine months on receipt of a statement by their employer. Regular simplified employment remains the same: six months. This simplified procedure does not require an application for a work permit, just a registration of the statement '*Employer's declaration of intent to employ a third country national*' (referred to henceforth as a declaration of intent) at the local labour office.[78] Declarations of intent are required separately for each employer.

With new legislation in 2018, more formal requirements are in place for employers who register declarations of intent.[79] If people are employed under a declaration of intent, wages, work location, working days (not hours), work position (profession or duties) and sector or branch should be mentioned in a written agreement. If this is a civil contract – which is formally not a contract of employment – it is not subject to the provisions of the Labour Code and there is more room for flexibility. However, the provisions on minimum wage now also apply to most common civil contracts (known as Zilecenie).[80]

If an employer would like to prolong the employment of a foreigner, the employer or the migrant worker should apply for a work permit and a residence permit. There are two options, they can apply for both a residence permit and a separate work permit, or they apply for both at once and get one document.[81] This latter type of permit appeared as a result of an EU directive, aimed at creating uniform residence permits for work. The Polish Labour Inspectorate noted that this provides some kind of benefit for workers, e.g. simplified ways to obtain the right to work.[82]

1.6 Revised legislation

Amendments were made to the law on promotion of employment and labour market institutions and the alien law, which entered into force in the beginning of 2018. The new provisions included introduction of seasonal work permits, amendments to the definition of performance of irregular work by an employee,[83] an amendment to the definition of an offence of fraudulent employment – abusing professional dependency was added to the definition – as well as more formal rules related to the procedure of registering a declaration of intent to employ a third country national.[84] Declarations of intent used to be submitted and stamped in the relevant labour office without any formal control. As of 1 Jan 2018, each declaration goes through a thorough check in terms of employer's standing, past offences and credibility.

77 Currently the provisions are in the law on promotion of employment. The specific countries are mentioned in the decree by the Minister of Labour and Social Policy
78 Fact finding mission to Poland, interview Labour Inspectorate, February 2017
79 Information provided by the Association for Legal Intervention (SIP) in May 2018
80 Information proved by the Association for Legal Intervention (SIP) and La Strada Poland, March 2019
81 Fact finding mission to Poland, interview Labour Inspectorate, February 2017
82 Fact finding mission to Poland, interview Labour Inspectorate, February 2017
83 It used to be related to work without a work permit, or legal status that allows for work, but also work contrary to the conditions stipulated in the work permit (e.g. remuneration, type of contract etc.)
84 Citizens from Ukraine, Russia, Armenia, Moldova, Belarus, Georgia

In addition there is a new requirement: if you have worked for an employer who wants to continue this relationship and apply for a work permit for you, you are allowed to work for this employer while this application is pending – but only if your contract is an employment contract. Initially it used to be valid for all types of contracts, including civil contracts.

1.7 Statistics on declarations of intent and work visas

Temporary migration to Poland based on declarations of intent is currently dominated by workers from the Ukraine. In 2017 a total of 1,824,464 declarations of intent to employ were issued, of which 94 per cent were for Ukrainians.[85] According to other statistics provided by the government, a total of 235,626 work permits were issued in 2017 for migrant workers, mainly for Ukrainians, but also for workers from Belarus, India, Moldova, Bangladesh, Russia and others.[86] These figures show large increases; an 84 per cent increase from 2016 (127,000 permits granted), [87] and a 258 per cent increase from 2015.[88]

As figures show, and as reported by the Ministry of Labour, the method of using the employer's declaration of intent is more popular and more frequently used than regular work permit rules. However, workers do not necessarily use their declaration or often have more than one; on average 1.5 declarations per worker. It is therefore expected that the number of actual workers is much lower than the figure of registered declarations.[89]

Although estimates of the exact amount of Ukrainians working in the country differ, it is evident that there is a high demand for Ukrainian migrant workers from Polish employers, while for Ukrainians Poland remains their primary destination country, mainly it seems for geographical, linguistic and cultural reasons. Ukrainians can earn more in Poland, while Polish employers regard them as a cheap labour force.[90] Of the permits granted in 2017 to Ukrainians, 56 per cent were for less than one year and 44 per cent for more than one year (and less than three years). The positions filled by Ukrainian workers are primarily short-term (three to six months), and these constitute about 85 per cent of the offers registered. Moreover, 56 per cent of positions offered to Ukrainian workers did apparently not require any specific skills or qualifications.[91]

In 2017, over 13,000 work permits were issued for Nepalis, Indians and Bangladeshis combined, which is more than four times more than in 2016. News services reported in September 2018 that the Polish embassy in New Delhi was "struggling to cope with demand for work visas from those three countries, with a backlog of up to 25,000 applications from people with offers of work in Poland."[92]

85 These included 1,714,891 declarations for Ukrainians; 58,046 for Belarusians, 31,456 for Moldovans; 11,126 for Georgians; 6,150 for Russians and 2,786 for Armenians. Source: Ministry of Labour and Social Policy https://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/ (10/05/2018)

86 These included 192,547 permits for workers from Ukraine; 10,518 for persons from Belarus; 3,792 for Moldovans; and 1,433 for Russians. According to the government in 2017, 3,397 work permits were granted to persons from Bangladesh; 4,064 work permits for Indians, 9,732 work permits for persons from Nepal. In the first half of 2018, these figures were: Bangladesh: 2,929, India: 3,824, Nepal: 10,304. See https://archiwum.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/ (March 2019)

87 Information provided by Ministry of Labour, fact finding mission, February 2017

88 https://www.forbes.com/sites/freylindsay/2018/09/19/ukrainian-immigrants-give-the-polish-government-an-out-on-refugees/#34b2f10b4bb1

89 Information provided by Ministry of Labour, fact finding mission, February 2017

90 https://wiiw.ac.at/#_ftn3

91 https://wiiw.ac.at/#_ftn2

92 https://notesfrompoland.com/2018/10/03/polands-anti-immigration-government-is-overseeing-one-of-europes-biggest-waves-of-immigration-but-doesnt-want-to-admit-it/

1.8 Migrant workers' vulnerability to exploitation

Migrant workers, undocumented migrants and other groups with limited access to employment in general are more likely to be vulnerable to exploitation. This is particularly so for those working in non- or less well-regulated sectors such as domestic work or prostitution.

As reported, many migrant workers from former Soviet Union countries currently work on a registered statement by an employer, on the basis of which they can obtain a Polish (work) visa. This has created a situation of dependency between migrant workers and their employer, making migrants more vulnerable to exploitation and abuse. Although new legislation has put in place stronger conditions for obtaining this temporary work visa, it is still possible for employers to offer civil contracts without being obliged to follow the labour law.

Stakeholders interviewed for this report observed[93] that it often occurs that people arrive in Poland on one statement but directly go to another employer, who then employs them irregularly. Domestic workers who work formally for one household often work irregularly for more households. It has apparently been reported by the media that Polish employers – in particular in the agricultural sector – 'sold' declarations of intent to workers, for 200 zloty (€ 46) up to € 200 or much more.[94] Workers have also been known to buy a declaration of intent from employers they do not know via intermediaries, obtain a visa, enter Poland and start working irregularly for other employers.[95] Domestic workers and other low-paid workers – working for many employers simultaneously – are not able to demonstrate sufficient income and valid written contracts from each employer, and are thus discouraged from applying for residence permits.

As noted, many workers occupy temporary and unskilled roles, which increases their vulnerability. Stakeholders reported that if a worker is on a temporary visa, employers frequently try not to pay the last month of work, or the full salary of workers. As stated by a representative of the NGO Nasz Wybor, "They do not pay for the last month, when they know that the workers are in hurry to leave the country in time and cannot easily prove that they are still owed money."[96] Nasz Wybor also received complaints from workers who were replaced or fired after some weeks without being paid, "under the excuse that they had only served a voluntary trial period." The trade union OPZZ reported seeing cases where workers were working several weeks or months and were not paid at all. According to them, "such situations not only occur with migrant workers but also with Polish workers."[97]

Trade unions and NGOs also reported other violations. Often migrant workers have no formal contract, and workers are not aware that they have to sign a contract. If contracts are available, they are mostly in Polish and not translated into the language of the migrant worker. Employers also keep contracts in their possession without providing workers with a copy. Other personal documents such as passports can be kept by the employer. Employers often mistreat workers by charging them for any possible expenditure (accommodation, papers, transport etc.). Housing is often included in the package and organised by the employers, who then deduct high costs from salary payments. Sometimes food is also offered and charged.[98]

93 Fact finding mission, Poland, February 2017
94 Fact finding mission, meeting with Nasz Wybor, February 2017
95 Information from the Association for Legal Intervention Poland – PICUM mapping work visa
96 Fact finding mission Poland, February 2017 – interview Nasz Wybor
97 Fact finding mission Poland, February 2017 – interview OPZZ
98 Fact finding mission Poland, February 2017 – interview Nasz Wybor

Stakeholders further reported malpractices of fake employment agencies that provide – on request of payment – documents for people to work in Poland; upon arrival they then find out that there are no employers and no jobs.[99] A growth in 'creative' abusive and fraudulent practices has been noticed, including mis-use of the Posted Workers' Directive, on the basis of which workers can be 'posted'; employed in one EU member state on a temporary basis to carry out work in another member state.[100] Poland is seen as the country sending the biggest number of posted workers to other European countries, [101] including Ukrainian and other CEE and Asian nationals.

1.9 Complaint mechanisms

It is acknowledged that there is a risk that the tied working permit (tied to the employer) is restricting workers' freedom to change employer or complain about bad working procedures. Polish citizens and foreigners can complain to the police or Labour Inspectorate – there are formal complaint mechanisms in place – but workers do not often file complaints[102] because the procedures are long and complicated. Despite this, the Polish Labour Inspectorate reports that increasingly complaints are being received, in particular from Ukrainian workers. As many of them work on a civil contract, they are not protected by the Polish labour code and can only complain via civil procedures, which do not offer much protection. In general there is no opportunity for workers to file complaints anonymously, except for cases of suspected serious health or life threats.[103]

Often NGOs receive complaints from workers via helplines or information desks. Not all complaints are registered by the organisations that receive them. According Nasz Wybor, "only when workers want to make an official complaint is the complaint registered." Steps taken by NGOs in Poland to support workers include contacting the employer to inform him/her about information received that an employee was not paid. This often helps to solve the issue and receive payment for the worker. NGOs can also support workers to claim back wages via legal procedures. If there are official complaints, these are referred to the Labour Inspectorate.

For undocumented workers, it is even more difficult to file a complaint, as there are no safe reporting mechanisms in place. Due to their irregular status they risk fees, arrest and/or deportation. Moreover the Labour Inspectorate, which controls all economic sectors, also has the duty to report on detected irregular work.

A 2014 report by the Association for Legal Intervention found that different estimates put the number of undocumented migrants at between 50,000 and 450,000 people, coming mainly from Ukraine, Vietnam, Moldova, China and Belarus.[104] Stakeholders interviewed could not

99 Fact finding mission Poland, February 2017

100 The Posting of Workers Directive was adopted in 1996. In 2014 the Enforcement Directive was adopted with the aim of strengthening the practical application by addressing issues related to fraud, inspections and monitoring, joint liability in subcontracting chains etc. On 8 March 2016, the European Commission proposed a revision of the rules on posting of workers within the EU to ensure they remain fit for purpose. The Commission proposal was adopted on 28 June 2018

101 http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607346/IPOL_BRI(2017)607346_EN.pdf

102 According the Association for Legal Intervention (SIP), the Polish Labour Inspectorate has mentioned on several occasions that they receive more and more complaints from migrant workers, but this is not the statistical data that they would collect, so no further sources are available.

103 Fact finding mission Poland, February 2017 – Labour Inspectorate

104 *Unprotected: Migrant Workers in an Irregular situation in Central Europe*, Association for Legal Intervention, 2014: http://interwencjaprawna.pl/en/files/unprotected.pdf

confirm these figures, but did confirm that there are Ukrainians that are undocumented, and the same for other groups of migrants. Representatives of the Labour Inspectorate and the Ministry of Labour stated that, "there seems to not be a big problem of undocumented migrants."[105]

Cooperation on – and referral of – cases between trade unions and migrant rights or anti-trafficking NGOs seems incidental or non-existent,[106] despite the fact that the same work is often done by the different organisations, such as mediation with employers requesting them to pay their workers.

NGOs in general complained that trade unions in Poland have not been very active in supporting migrant workers' rights, regardless of the helpdesk that was set up in 2016 by OPZZ for migrant workers, in particular those from former Soviet Union countries. "Trade unions seem mainly concerned about Polish workers, not about migrant workers."[107] NGOs also reported a lack of willingness from trade unions to cooperate more closely with NGOs.

1.10 Vulnerable economic sectors

Stakeholders interviewed by La Strada International in 2017 and 2018 reported that the sectors most vulnerable to labour exploitation in Poland are agriculture – in particular fruit and vegetable picking and horticulture – construction, food processing, domestic work (housekeeping and cleaning) and the garment sector. The Labour Inspectorate also referred to the catering trade and forestry.[108]

The same sectors were mentioned by the EU Agency for Fundamental Rights (FRA) in their 2014 research.[109] These are also the sectors where many migrant workers with declarations of intent work. In 2016, 60 per cent of declarations related to employment offered in agriculture, by early 2017 this was around 26 per cent. Larger concentrations of workers with temporary work visas was also noticed in particular in construction and domestic work, as well as in some other sectors.[110] According to the NGO Nasz Wybor, Ukrainian migrant workers are working in particular in agriculture (apples, strawberry fields), construction and factories (for example meat factories).

The Polish prostitution sector is, as in other countries, vulnerable to exploitation of its workers. Alongside Polish nationals many Ukrainians work here, next to other migrant workers; e.g. migrants from Vietnam are known to work in street prostitution. Prostitution

105 Fact finding mission, February 2017 – interview with Ministry of Labour
106 Interview Nasz Wybor, February 2017
107 Fact finding mission, February 2017 – interviews with Nasz Wybor and La Strada Poland
108 Fact finding mission Poland, February 2017 – interview La Strada Poland
109 *Human Trafficking for Forced Labour in Poland – Effective Prevention and Diagnostic of Mechanisms*, Adstringo, 2014. FRA report of 2014 pointed to agriculture and construction as the sectors most prone to migrants' labour exploitation. The majority of those who pointed to agriculture specified growing or picking fruits and vegetables. Further researchers referred to manufacturing of food products, activities of households as employers, restaurants and food services, as well as service activities and retail trade. Social Fieldwork Research (FRANET) *Severe Forms of Labour Exploitation Supporting Victims of Severe Forms of Labour Exploitation in Having Access to Justice in EU Member States Poland*, 2014 - file:///C:/Users/Suzanne/Downloads/severe-labour-exploitation-country_pl.pdf
110 When the employers' declaration of intention to employ was introduced in 2006, it was only established for the agriculture sector, only for three months and only for three countries (Ukraine, Belarus and Russia). Then it was revised, e.g. in 2008 the period was extended, in 2009 and 2010 new countries were introduced. In 2018 it was extended until nine months for seasonal workers. Information provided by the Ministry of Labour, February 2017 and SIP in 2018

in Poland is not criminalised, but operating brothels or other forms of pimping or coercive prostitution and prostitution of minors is prohibited. Prostitution is not recognised as legitimate work. Sex workers receive no social benefits.

As for exploitation of migrant workers, according to La Strada Poland, an organisation that supports victims of human trafficking directly, Ukrainians seem mostly exploited in restaurants and food-processing industry and shops; while Asian migrant workers are often employed in restaurants. Migrant workers in general are regularly exploited in garment factories.[111] Cases of labour exploitation have also been identified in industrial production and the catering sectors; sectors that traditionally make use of informal contracts and structures where it is easy to 'hide a workplace', as you never know the nature of the job that a specific person performs in a specific work place. Additionally, the seasonal nature of employment in these sectors makes it difficult for possible inspection from state institutions such as the police or the Labour Inspectorate.[112] The FRA report of 2014 also referred to exploitation at larger factories, where "the employment structure is complicated and difficult to inspect as it involves many subcontractors."[113]

1.11 Exploitative practices intermediaries

A research report by Nasz Wybor revealed that many migrant workers use the services of intermediaries to help them find a job, submit visa documents or provide documents to legalise their stay if they are already in Poland. The majority of intermediaries (large companies and unregistered intermediaries) cooperate with their agents (individuals, agencies or their offices) in Ukraine to provide workers. The researchers identified the following most common irregular practices of intermediaries:

- Job-finding fees. Charges for arranging a job and preparation of documents.
- Deposit payments to agencies for the worker to appear at the workplace.
- Deducting sums from salaries for housing or other expenses.
- Contracts only in Polish, with no translation provided.
- Blackmailing of migrant workers, using their desire to prolong their work in Poland and legalise their residence.
- Recruitment for fake jobs and the sale of permits for visas.
- Limited training in workplace health and safety.
- Posting of migrant workers to other EU countries occurs irregularly, meaning no legal employment and without security taxes paid.[114]

According to the same report, Poland is experiencing a rapid growth in agencies; 6,081 agencies were registered in 2015, 7,386 in 2016 and 8,646 agencies by 20 October 2017. One million two hundred thousand people (both Poles and foreigners] found jobs through agencies in 2015, with 799,727 of these being temporary employment. [115]

111 Information from La Strada Poland at kick off meeting in Amsterdam, December 2016
112 *Human Trafficking for Forced Labour in Poland – Effective Prevention and Diagnostic of Mechanisms*, Adstringo, 2014.
113 http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_pl.pdf
114 *Working in Poland: Violations of the Labour Rights of Ukrainian Migrants in the Construction and Services Sectors*, Myroslava Keryk, Nash Wybor
115 Ibid

2 Legal framework and other non-binding initiatives

This chapter describes the legal framework and other non-binding (non-legal) initiatives to prevent and combat severe forms of labour exploitation, including human trafficking and forced labour. It explains more about the Polish penal code articles and definition on human trafficking, as well as other legislation in place. The National Action Plan to combat human trafficking and other non-binding corporate social responsibility (CSR) initiatives, such as the UN Guiding Principles on Business and Human Rights and the related Polish Action Plan, the Global Compact, and the OECD guidelines are briefly explained in this chapter as well.

2.1 Criminalisation of human trafficking

Human trafficking is criminalised in Poland. Article 189a of Poland's penal code prescribes punishments of three to 15 years' imprisonment. Article 115 §22 and §23 of the penal code gives an elaborate definition of the crime trafficking in human beings.[116] It focuses not only on various forms of sexual exploitation, but also includes forced labour and services, begging, servitude or other forms of exploitation such as removal of cells, tissues and organs.

The Polish definition of human trafficking which came into force on 8 September 2010, §22 is: the recruitment, transportation, transfer, harbouring or receipt of persons by means of:

- violence or unlawful threat;
- abduction;
- deception;
- misleading: the exploitation of a person's mistake or their inability to properly comprehend the action undertaken;
- the abuse of a relationship or dependence, taking advantage of a critical situation or state of helplessness;
- giving or receiving payments or benefits or its promise to achieve the consent of a person having control over another person, for the purpose of exploitation, even with the person's consent;
- should the perpetrator's behaviour concern a minor, it shall be considered human trafficking even if it does not involve any of the means set forth in points 1-6 above.

The Polish criminal definition of human trafficking, which was debated for about nine years, remains an issue of discussion. Stakeholders in this research expressed the particular need to make forced labour a separate criminal offence.[117] It was reported that the government's Sustainable Development and Corporate Social Responsibility team is currently working on a proposal for a legal definition of this offence.[118]

116 See Polish anti-trafficking website http://www.handelludzmi.eu/hle/about-human-traffickin/human-trafficking-in-p/6185,What-is-human-trafficking.html

117 Interview researcher at Warsaw University, fact finding mission Poland, February 2017

118 Information provided by La Strada Poland, March 2019

2.2 Criminalisation of Forced labour

According to the Polish criminal code article on human trafficking, forced labour is "one out of five areas of illegal exploitation in which a perpetrator of a human trafficking crime may operate."[119] Forced labour is not a stand-alone offence, even though Poland ratified all ILO conventions. Therefore to be able to prosecute forced labour, the three required elements of the trafficking definition (e.g. recruitment or transfer of a person; use of force, threat or deception; and the intention to exploit) all need to be proven. Cases of severe labour exploitation where human trafficking cannot be proven are thus not prosecuted in Polish courts, or only prosecuted as another type of crime. These include for example 'persistent violation of labour laws' (which only applies to workers with employment contracts, so the application is very limited) or 'forcing one person to do something' or 'fraud' or 'limiting a person's freedom of movement'.[120] Further criminal acts related to rape and (forced) prostitution are used, or labour law articles.[121]

Article 203 of the Polish penal code criminalises inducing an adult into prostitution through force, fraud or coercion, and Article 204.3 criminalises inducing a child into prostitution; both articles prescribe punishments of one to 10 years' imprisonment.

However, even when elements of the trafficking definition might not be proven, there can be cases where severe exploitation is a clear fact. According to NGOs, in the majority of such cases there is no successful prosecution, with the risk that the victim is not granted any right and receives instead an order to leave. Some stakeholders therefore lobby in Poland for an amendment and a simple provision in the penal code that in cases where not all elements of human trafficking can be proven, the single provision on forced labour can be used to prove that people are victims of forced labour. [122]

Since 2012, however there has been a special act on the exploitation by employers of third country nationals, in line with the EU Employers Sanctions Directive.[123]According to this act,[124] which introduced (article 10) the term 'severe exploitation' or 'severe abuse' (depending on the translation), employers can be fined up to 30,000 zloty (about € 8,000). If an employer hires an undocumented migrant and exploits him/her, they risk receiving the highest fine. A complaints mechanism is also described in this act.[125] Moreover the act includes a paragraph stating that those who hire a person, knowing that this person is a victim of trafficking, can be sentenced for up to three years.[126]

119 Interview researcher at Warsaw University, fact finding mission Poland, February 2017

120 Article 115§ 22 of Criminal Code of 6 June 1997 (available:http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553)

121 Interview researcher fact finding mission, February 2017

122 Based on email correspondence with La Strada Poland of 15/05/2017 - and interview with researcher at Warsaw University, February 2017

123 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals

124 Articles 9 and 10 of the Act of 15 June 2012 on the effects of performing work by foreigners staying illegally on Polish territory transpose Article 9 (1) (c) to (e) of the Employer Sanctions Directive

125 For an analysis of rights under this act, see publication by the Centre for Legal Intervention (SIP) https://interwencjaprawna.pl/en/files/employers-sanctions-directive-in-poland.pdf

126 *Severe Labour Exploitation: Workers Moving Within or into the European Union* – Annexes III and IV – FRA June 2015

2.3 ILO Forced Labour Protocol 2014

In March 2017, Poland ratified the additional ILO Forced Labour Protocol of 2014 (P029 – Protocol of 2014 to the Forced Labour Convention, 1930).[127] This Protocol updated the 1930 ILO Forced Labour treaty. It requires "state parties to educate employers and vulnerable individuals about forced labour, and to enforce legislation that applies to all workers and sectors of the economy. It calls for strengthening of labour inspection services and to protect individuals, including migrant workers, from possible abuse and fraud during recruitment and job placement."

Governments are expected to "support efforts by the public and private sectors to prevent and respond to complaints of forced labour, and to address the underlying causes." The protocol states that "victims of forced labour should be identified and should have access to remedies, including compensation, regardless of their legal status." The protocol requires states to "develop national policies and action plans against forced labour in consultation with employers' and workers' organisations, and to cooperate with other states to eliminate forced labour practices."[128]

2.4 Labour Code

In Poland the Labour Law, the Labour Code and Act on Promotion of Employment and Labour Market Institutions protect workers against labour rights infringements. The Labour Code is the main legal act, describing the conditions of employment in Poland and which defines the rights and obligations of employers and workers. One of the basic principles of the Polish Labour Law is the right to choose work freely, "resulting from the provision of Article 10 of the Labour Code, which also guarantees minimum remuneration and the assistance of the public authorities in taking up employment, as part of state policies to combat unemployment." In addition, there is the right to choose work freely, as specified in Article 10 § 1 of the Labour Code.[129] Article 11 of the Labour Code sets out the principle of discretion when establishing an employment relationship.[130] This Article guarantees protection for the employee against exploitation and enforcement to work, which the employee did not agree to. Further, Article 11 of the Labour Code contains an expression that employers are obliged also to protect 'other personal rights of employees', which guarantees protection of rights and freedom of employees.[131]

127 International Labour Organization, P029 – Protocol of 2014 to the Forced Labour Convention 1930, 11 June 2014 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:P029:NO (accessed 1 February 2018)

128 Protocol of 2014 to the Forced Labour Convention, 1930 (Entry into force: 09 Nov 2016) Adoption: Geneva, 103rd ILC session (11 Jun 2014)

129 See http://www.en.pollub.pl/files/17/attachment/98_Polish-Labour-Code,1997.pdf

130 http://www.ohchr.org/Documents/Issues/Business/NationalPlans/PolandNationalPland_BHR.pdf See page 9

131 Prof. Zbigniew Lasocik;M.A. Emilia Rekosz-Cebula; M.A. Łukasz Wieczorek - *Human Trafficking for Forced Labour in Poland – Effective Prevention and Diagnostics of Mechanisms*, ADSTRINGO Poland and Russia: *Addressing Trafficking in Human Beings for Labour Exploitation through Partnership, Enhanced Diagnostics and Improved Organizational Approaches*, Warsaw, October 2014 – this publication analyses the protective provisions in the labour code.

2.5 Law on promotion of employment and labour market instruments

In 2018 new legislation entered into force, see sections 1.5 and 1.6. Definitions of irregular[132] (illegal) work and/or employment were amended as of January 1, 2018, and now state that a third country national is performing work irregularly, or the employment is irregular, when one of the following conditions is met:

- an employee does not have a work permit nor a right to work without a work permit;
- an employee's legal status does not allow for performing work (e.g. tourist visa);
- an employee holds a different position than the one stipulated in his/her single permit or EU blue card, or the conditions of work vary from the ones stipulated in the abovementioned permits;
- there is no written employment or civil law contract between the parties.

When an employee is found to be performing work irregularly, they receive a fine from 1,000 zloty (€ 232) up to 5,000 zloty (€ 1,162), while an employer should be punished with a fine from 1,000 zloty (€ 232) to 30,000 zloty (€ 6,975). There are several other petty offences (*wykroczenia)* that an employer can be penalised for: employers who have misused employees, e.g. their professional dependence or their inability to understand their actions, in order to employ them illegally are subject to a fine of 3,000 to 30,000 zloty (€ 697 to € 6,975). The same penalty is incurred for people who have used the above-mentioned fraudulent modus operandi to force another person to employ a third country national irregularly. An employee whose work is irregular can be expelled from the country, with a return ban for up to five years.[133]

2.6 Alien Law

According to article 302 (1)(4) of the Polish Alien Law, a third country national should be issued an obligation to return to their home country if they have worked without a relevant work permit or declaration of intent. There are two exceptions to this rule:

1. If an employer has been punished for misusing or abusing the employee's professional dependency, or their inability to understand their actions, in order to employ them irregularly.
2. If there is a certain situation or condition that requires an obligation to return should not be ordered, in the interests of the worker.[134]

2.7 Other non-legally binding initiatives

There are a couple of other relevant non-legally binding initiatives and policy measures in place that address human trafficking, forced labour or corporate accountability. These include a National Action Plan on combating trafficking in human beings, a National Action Plan on business and human rights, the OECD National Contact Point, the Polish Global Compact, and other CSR initiatives. International standards developed by the UN, the OECD and the ILO provide opportunities for governments and businesses to undertake action to tackle labour exploitation and human trafficking, but often such action is voluntary.

132 In compliance with PICUM's Words do Matter initiative, LSI uses the word irregular and not illegal. See https://picum.org/words-matter/

133 Information provided by the Association for Legal Intervention (SIP), May 2018

134 Article 2 (14), (22a), 120 - law on promotion of employment and labour market instruments 20 April 2004

2.8 National Action Plan on human trafficking

Poland's action to prevent and prosecute human trafficking is mainly defined by the National Programme for Combatting and Preventing Trafficking in Human Beings. Poland has no National Referral Mechanisms on human trafficking in place. The current National Action Plan, adopted in December 2018 for the period 2019-2021 includes measures related to:

- prevention;
- support and protection of victims;
- prosecution of the offence of human trafficking;
- training activities;
- research concerning human trafficking/evaluation of the activities.

Current actions are mainly the responsibility of different stakeholders, who should take up these duties as part of their core work. No additional budget has been provided by the Polish government for the implementation of the National Action Plan on human trafficking.[135] The main stakeholders responsible for implementation are the 'voivodeship'[136] teams against human trafficking operating at voivodeship governor offices, mainly under the departments of social policy. It is their duty to take up the actions as part of their everyday work, without additional funding.

2.9 National Action Plan on business and human rights

In May 2017 Poland adopted a National Action Plan on business and human rights,[137] coordinated by the Ministry of Foreign Affairs. Many stakeholders have been engaged for the development and implementation of the plan, including governmental institutions, the private sector and non-governmental organisations.

The Plan mentions: "as Poland ratified the Protocol of 2014 to Forced Labour Convention No 29 of 1930, it is necessary to initiate measures that will require employers in the public and private sectors to provide information under their reporting procedures on implemented procedures, processes, and standards for counteracting forced labour."[138] Regarding the prohibition of forced or compulsory labour, the Plan notes that "although the Labour Code does not contain a definition of forced labour, according to Article 65(1) of the Constitution of the Republic of Poland, everyone shall have the freedom to choose and to pursue their own occupation and to choose their place of work (with exceptions specified by law)." The Plan further states that "it is known that legal regulations themselves are not fully sufficient to protect employees' rights," and refers to the fact that "malpractices in the labour market cannot be eliminated by introducing just laws, 'good' practices must be established to implement the laws." Subsequently, it therefore recommends three actions, to ensure that good practices are implemented:

135 Interview La Strada Poland, April 2018

136 A voivodeship is the highest-level administrative subdivision of Poland – like a "province" in many other countries.

137 The Polish National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights 2017-2020 has been adopted by the Council of Ministers on 29 May 2017 – for the full plan, see http://www.ohchr.org/Documents/Issues/Business/NationalPlans/PolandNationalPland_BHR.pdf For assessment of all national action plans on business and human rights, see https://www.icar.ngo/news/2017/8/20/icar-eccj-and-dejusticia-release-2017-update-of-national-action-plan-assessments

138 http://www.ohchr.org/Documents/Issues/Business/NationalPlans/PolandNationalPland_BHR.pdf See p.32

- to raise awareness of all those involved in the labour market;
- to strengthen the capacity of law enforcement, Labour Inspectorates and other authorities which are or should be involved in eliminating labour exploitation;
- to establish an effective system of supervision over the labour market and all actors operating there.[139]

Monitoring of the implementation of the National Action Plan is carried out through interim reports, dissemination of good practices and a final implementation report by the end of 2020.[140]

There is also a Polish Institute for Human Rights and Business (*Polski Instytut Praw Człowieka i Biznesu)* that closely monitors businesses' compliance in respecting human rights.[141]

2.10 OECD Responsible Business Conduct and National Contact Point

Victims of human rights abuses by multinational enterprises can report to the Polish OECD National Contact Point (OECD NCP). The NCP can then start proceedings on the basis of the OECD Guidelines for Multinational Enterprises to resolve the conflict.
In Poland the OECD NCP was established in 1998, since June 2016 it falls under the responsibility of the Ministry of Economic Development.[142]

The OECD Guidelines are recommendations "for the standards of responsible business conduct addressed by governments to enterprises whose business extends beyond the boundaries of one country."[143] Enterprises that are based in one of the countries that implement the Guidelines are called on to respect them wherever they conduct their economic activity. There are currently no cases known of filed notifications of non-observance of the Guidelines at the Polish NCP, or against Polish multinationals for severe labour exploitation of workers.[144]

2.11 Corporate social responsibility

In general, CSR is getting more attention in Poland.[145] The Responsible Business Forum Poland was founded in 2000 by a group of Polish business leaders, academics and non-governmental organisations.[146] This was the first organisation in Poland to work actively on CSR. In September 2016, the Minister for Economic Development and Finance established the Advisory Board for Sustainable Development and Corporate Social Responsibility (the CSR Advisory Board).[147] This board, which comprises different stakeholders' is

139 *Human Trafficking for Forced Labour in Poland – Effective Prevention and Diagnostic of Mechanisms*, Adstringo, 2014.
140 Information provided by La Strada Poland, 2018
141 http://pihrb.org/english/
142 The website of the Ministry of Economic Development provides detailed information about the OECD Guidelines for Multinational Enterprises and OECD NCP activities http://www.mr.gov.pl/strony/zadania/wsparcie-przedsiebiorczosci/spolecznaodpowiedzialnosc-przedsiebiorstw-csr/krajowy-punkt-kontaktowy-oecd/ .
143 http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf
144 https://complaints.oecdwatch.org/
145 Several big companies run foundations "to help show their interest about CSR". For example oil company ORLEN (one of the biggest in Poland) runs the foundation "Gift of heart" to help children. http://www.orlendarserca.pl. PZU (the biggest polish insurance company) runs Foundation PZU to support education, work for equal opportunities etc. http://fundacjapzu.pl/
146 http://odpowiedzialnybiznes.pl/english/
147 Journal of the Minister of Economic Development of 22 September 2016, Item 49

responsible for developing recommendations and proposals for sustainable development. The board meets four times a year. In between meetings, different working groups convene, which are responsible for developing a CSR strategy; business ethics and standards, and promotion of CSR in general.

Although social responsibility initiatives are in general voluntary and non-legally binding, such initiatives can help to prevent severe forms of labour exploitation, for example by companies undertaking human rights risks (due diligence) assessments that include identifying risks associated with human trafficking.

Furthermore, businesses can create and implement adequate human rights (procurement) policies for themselves and their suppliers, and raise awareness about the risks of using trafficked labour. The cooperation of businesses with other stakeholders (including local government authorities, NGOs and local communities) is important in identifying risks associated with forced labour and human trafficking and to help workers, including by establishing complaints mechanisms and access to remedies.

2.12 UN Global Compact Network Poland

The United Nations Global Compact[148] is another voluntary initiative that supports companies to "conduct business responsibly by aligning their strategies and operations with *Ten Principles on Human Rights, Labour, Environment and Anti-corruption*; and take strategic actions to advance broader societal goals", such as the UN Sustainable Development Goals. It seeks wide participation from a diverse group of businesses and other organisations.[149] In Poland the Global Compact was launched in 2011, and currently has 77 private sector members.[150]

148 https://www.unglobalcompact.org/what-is-gc
149 http://www.globalcompactromania.ro/how-to-join/faqs/?lang=en
150 http://ungc.org.pl/

3 Human trafficking and labour exploitation in Poland

This chapter looks at the indicators and available statistics for human trafficking, forced labour and labour exploitation. These include figures registered by NGOs and research reports on human trafficking, as well as statistics provided by the Polish Labour Inspectorate. Several recent cases of severe labour exploitation (human trafficking) are also described.

3.1 Identification and registration figures for human trafficking

Poland is no longer simply a country of origin for victims of human trafficking – it is also a transit and destination country for trafficked persons.. Victims (women, men and children) are mainly trafficked for sexual exploitation and forced labour. The number of people trafficked for labour exploitation is increasing in Poland, and includes victims originating from countries across Europe, Asia and Africa. There is an increasing vulnerability to (trafficking for) labour exploitation among Poland's growing migrant population, in particular from Ukraine and Belarus.

In Poland, statistics particularly show exploitation for workers involved in the restaurant and construction industries, as well as shipyards (North Korean workers) and agriculture. Exploited North Korean workers have been detected conducting forced labour for the North Korean State; "the profits generated flow directly to the North Korean government."[151] Children, particularly Roma children, are recruited for forced begging in Poland. Women and children from Eastern Europe, particularly Bulgaria, Romania and Ukraine, are trafficked for sexual exploitation in Poland.

In 2017, law enforcement identified 155 potential trafficking victims (compared to 144 in 2016), of which 21 joined the nationwide witness and victim protection programme. The National Intervention-Consultation Center for Victims of Trafficking (KCIK) supported 187 potential victims, 75 were victims of trafficking for forced labour; 53 were foreigners.[152] In 2018 the total number of victims assisted by KCIK was 181, including 110 women and 98 foreigners.[153]

In 2017, the Polish authorities reported they had initiated 27 investigations under Article 189a, compared with 31 in 2016 and 30 in 2015. In addition 34 investigations involved forced

151 Leiden Asian Centre; *North Korean Forced Labour In The EU, The Polish Case: How The Supply Of A Captive DPRK Workforce Fits Our Demand For Cheap Labour* – findings from the Slaves to the System project, 6th July 2016. At the 106th ILC session (2017), the ILO Committee discussed indications of severe exploitation of North Koreans in Poland. As a result it called upon the government of Poland to increase its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to forced labour; to provide information on the measures taken to identify cases of forced labour to the Committee of Experts paying particular attention to the situation of workers from the Democratic People's Republic of Korea; take immediate and efficient measures so that the perpetrators of such practices, if they occur, are prosecuted and that dissuasive penalties are issued; to ensure that identified victims of forced labour have access to adequate protection and remedies. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3330962

152 US TIP report 2018 and information provided by KCIK/La Strada Poland, May 2018 and Feb 2019

153 Information provided by La Strada Poland

labour (12 in 2016 and 17 in 2015). Authorities also prosecuted 47 suspected traffickers under Article 189a in 2017 (30 in 2016 and 23 in 2015).[154]

According the US Trafficking in Persons (TIP) report, reasons for such limited prosecutions include: "law enforcement had difficulty identifying this type of crime; there was no clear definition of what constitutes forced labour in the Polish criminal code; prosecutors and judges often lacked expertise in labour trafficking cases and; victims were often unwilling to testify against their traffickers."[155] The Polish Labour Inspectorate stated in 2017, "Polish prosecutors often dismiss cases of human trafficking, which makes labour inspectors believe that it is not worth focusing on the issue, as not much is happening with notifications made by labour inspectors."[156]

3.2 Identification of labour law violations – statistics from the Labour Inspectorate

All inspections conducted by the Labour Inspectorate in Poland are registered, as well as all identified cases of violations of the labour law. There is data registered related to the legality of controlled foreign workers as well. Preliminary results for 2016 – which were not yet fully verified in February 2017 – show that 4,200 inspections were conducted on the legality of employment of foreigners. This number is much higher than in previous years, when around 2,000 – 3,000 inspections were conducted annually. During 2016, around 30,000 foreigners were inspected, coming from 115 countries. For the period July 2011 until December 2015, only 16 reports were received of cases that possibly indicated human trafficking.

In 2017, the Polish Labour Inspectorate conducted 7,190 inspections, where 45,159 third country nationals were inspected.[157] Irregular work was detected at 1,069 inspections, and 5,385 foreigners were identified as working in irregular settings. Around 5,000 cases of irregular employed foreigners were reported in 2016, where before this figure was around 1,000 cases a year. Often these are migrant workers with permission to stay, but without permission to work. Most violations relate to the incorrect implementation of 'employment statement contracts', e.g. the intention to employ statement described different rates of pay than what was in reality paid by employers.[158]

The Polish Labour Inspectorate further reports that over 6,600 decisions were taken ordering payment of wages or other benefits due from an employer. Inspectors identified a total of 62,600 offences against the rights of people performing paid work. As a result they imposed 14,700 fines in the form of penalty tickets to offenders, sent almost 3,000 penalty requests to court, and applied 13,400 disciplinary measures. In 2017, labour inspectors sent 721 notifications to the prosecutor's office of the suspicion of a crime. Two hundred and twenty

154 Source US TIP report 2018, which further reveals: first-level courts issued six convictions under Article 189a in 2016 (33 in 2016 and 36 in 2015). In addition, first-level courts issued 24 convictions (15 in 2016) under Article 203. In 2016, the most recent year for which post-appeal judgments were available, judges issued a total of 58 final convictions (58 in 2015, 37 in 2014, and 41 in 2013). Courts upheld 34 convictions under Articles 189a and 253 (30 in 2015 and nine in 2014). Courts also upheld seven convictions under Article 204.3 (12 in 2015). In addition, there were 17 upheld convictions for forced prostitution under Article 203 (16 in 2015). One trafficker received a fine instead of a prison sentence.

155 US TIP report 2018

156 Fact finding mission, interview Polish Labour Inspectorate, February 2017

157 Publication by PIP - SPRAWOZDANIE z działalności Państwowej Inspekcji Pracy w 2017 roku Warszawa 2018 – another (English) publication of the Polish Labour Inspectorate mention that In 2017, labour inspectors conducted 80.8 thousand inspections of 63.6 thousand employers and other entities. https://www.pip.gov.pl/en/f/v/193358/NLI%20Poland%20report%20for%202017%20summary.pdf

158 Fact finding mission, interview Polish Labour Inspectorate, February 2017

one proceedings were initiated; in 55 cases the prosecutor's office apparently refused to initiate proceedings; 134 proceedings were discontinued; 112 indictments were sent to courts (status as of 15 March 2018). It is further stated that inspectors examined 97,200 problems raised in complaints.[159]

As far as the protection of labour rights for immigrants goes, labour inspectors only have the authority to intervene in cases of employees with employment contracts. The exceptions are: interventions in cases of work performed on the basis of a civil law contract that meets the conditions of employment (in these cases labour inspections can order an employer to draw up an employment contract, or file a lawsuit for the benefit of a worker so that the court decides that this relationship is in fact employment), or interventions in cases where rules of occupational health and safety are violated.

3.3 Cases of severe exploitation and human trafficking

According to a representative of Warsaw University, there are cases of people who arrive via a legal visa system, start working for normal payments or low payments, but then later conditions worsen (e.g. salary is cut, hours are extended) until they end up in a situation of severe exploitation.

Media reports, research and government data[160] indicate that North Koreans working in Poland were granted work visas despite UN and EU sanctions forbidding the hiring of workers from North Korea. Stakeholders for this research reported, "With the complicity of private companies and Polish state agencies, North Korean workers continue to work in Poland and to be exploited by Pyongyang, left with an income of less than USD 150 per month." North Korean labourers are regarded as highly vulnerable to forced labour. It was reported that "one ongoing prosecution involved suspected forced labour of 107 North Koreans in the agricultural sector with trafficking indicators, such as workers paying money to middlemen in advance to obtain employment. None of the workers were referred to services."[161] According to the US TIP report of 2018, the Polish Labour Inspectorate "inspected all companies employing North Korean workers, but did not report finding actionable evidence to justify recommending formal law enforcement investigations."

La Strada Poland stated, "It is a very problematic situation. The families of Korean people working here live under big pressure in North Korea. If we encourage some of those workers to testify, their families can be persecuted or threatened with death. The only solution is to ban employment of people from North Korea; the Polish Commissioner for Human Rights in Poland is promoting this solution. But those who make use of these workers have good political arrangements and it will be very difficult to change this with just lobbying and advocacy."[162] A Dutch law firm recently took up one case of a North Korean labourer who worked at a Polish shipyard under horrible circumstances and filed a lawsuit against a Dutch

159 https://www.pip.gov.pl/en/f/v/193358/NLI%20Poland%20report%20for%202017%20summary.pdf

160 *Slaves To The System: Locating Responsibility for Forced Expatriate Labour Practices by the Democratic People's Republic of Korea (DPRK)* – Remco Breuker, Leiden Asia Centre 2015-2016. The Polish authorities claimed that they did not issue new work visas in the last two years (2016 and 2017), yet this was contested by Prof. Remco Breuker from the University of Leiden who published a 115-page report entitled "North Korean Forced Labour in the EU: the Polish Case." According to the NGO, HRWF, Polish governmental data revealed that 299 North Korean citizens applied for a work permit in 2016, of which 187 were granted. https://hrwf.eu/poland-north-korea-the-exploitation-of-north-korean-workers-in-poland-raised-at-the-european-parliament-and-at-the-osce/

161 Fact finding mission, February 2017

162 Meeting researcher Warsaw University, fact finding mission, February 2017

company who built ship hulls there. The law firm is trying to prosecute the Dutch company for "profiting from the services provided with his exploitation."[163]

In 2018, La Strada Poland cooperated with the Dutch trade union (FNV – Foundation VNB) on a case where 10 Filipino truck drivers were identified as possible trafficked persons. The Polish prosecutor is currently prosecuting one of the perpetrators of this case. As reported by the Dutch trade union, often third country nationals 'employed' in Poland are being sent to other member states to work under Polish law and salaries.[164] Filipino truck drivers recruited to work in Poland were identified as working in other European countries including Denmark, Germany and the Netherlands, under very exploitative circumstances.

Also cases of exploitation of workers from Africa have been identified in Poland:

> In 2015, a young Moroccan man managed to enter Europe irregularly and came to Poland, where he started to work with other foreigners in a kebab booth. He was living in the flat of his 'employer' and received no payment, regardless of earlier promises and assurances about payments. The man was working many hours a day, while not being allowed to eat at work. At the start of the 'employment', the employer took money from the worker for preparing his residence card, which he never received. The employer further threatened and intimidated him. The situation was discovered when border guards conducted a raid and discovered that the man was working irregularly, due to which he was placed for three months in a closed detention centre, until he admitted that he gave false information out of fear of legal consequences. The investigation of the case for human trafficking was discontinued, because of insufficient evidence. However the Moroccan man was included in the "governmental support and protection programme for victims/witnesses of human trafficking" and he was granted a temporary stay under the Foreigners Act.

Many recent cases also concern the exploitation of Ukrainians or Belarusians. The following is a description of a recent Ukrainian case.

> On 8 February 2018 a Ukrainian migrant worker was employed irregularly by a local supplier for Lidl near a small Polish town. She had a stroke and went to the hospital. Her sister asked for help from the employer, who was hesitant to provide assistance, due to fearing punishment for having violated the labour law. The employer took her from the hospital and brought her to the nearest town, where he left her on a bench in a park. He then called the police, reporting the woman as a drunk Ukrainian, when she was actually in need of quick and professional medical support. The employer further told the sister to not report anything to the police about the case, him or the whole situation. The woman was in a bad health condition and needed expensive hospital treatment. The Polish Labour Inspectorate started inspecting the company and the employers' role.

163 https://nltimes.nl/2018/11/08/north-korean-forced-laborer-sues-dutch-company

164 https://www.manilatimes.net/500-ph-truck-drivers-in-europe-victims-of-unfair-labor-practices-but-wont-go-home-dfa/473846/ - https://www.philstar.com/nation/2019/02/17/1894266/philippines-embassy-pushes-poland-deployment-ban?fbclid=IwAR2WwTDuRIlVW95Tr_krASjXVTQWhadG6DDUC4DULRjE7bO7Nne8Z8xJ77M

> Before the incident happened, the employer was promoted in many of Lidl's advertising campaigns as a trusted role model, who has sold Lidl vegetables since 2003. After the incident Lidl in Poland immediately deleted his image from their commercial advertisement and considered breaking their relationship. It should be noted that every Lidl supplier is obliged to sign a Code of Ethics, which requires compliance with high ethical standards, in particular to act in accordance with provisions of the labour legislation.[165]

Another case relates to a group of Ukrainian and Belarusian workers:

> Seventeen Ukrainian and Belarusian workers were recruited by a Polish man and two Ukrainian middlemen over a couple of years to work in different Polish restaurants. The workers were accommodated in a 'workers' hostel', where living conditions were poor. The workers had to pay hidden and unlawful fees, for example for smoking in front of the hostel. The workers mainly washed dishes in the restaurants, for which they were paid around 8 zloty an hour (€ 2), while for the accommodation they had to pay 400 zloty (€ 100) per month. As the workers were determined to earn money, they agreed to work many hours a day (several hundred hours per month). Workers were also mentally harassed; they had to stand up in the night and listen for many hours to their 'recruiters', and were deprived of proper sleep. At the beginning, some of the workers decided to run away, but because some people finally got money (and also because they could eat in the restaurants where they were working) the rest decided to stay, waiting to receive the remainder of their money. Finally, due to a border guard intervention, several people were identified as victims of human trafficking and since October 2016, the case has been pending. The employer has been accused of human trafficking and was arrested. The victims have been assisted under the activities of a NGO that operates a project commissioned by the Ministry of Interior and Administration, and on this basis they were included in the governmental 'support and protection programme for victims/witnesses of human trafficking'.

In 2018 a case of Belarusian workers, recruited to work in Gdansk and exploited in the forestry industry in Sweden, was detected:

> In 2018, seven citizens of the Republic of Belarus contacted the hotline of the NGO Gender Perspectives (La Strada Belarus) in Minsk. They worked for a Polish construction company. They were legally employed; on the basis of an employer's declaration of intent, work visas were obtained. They were promised they would be employed on the basis of a labour contract.

165 Information provided by La Strada Poland, January and September 2018

Upon arrival in Poland, the workers signed (Russian) contracts for the execution of construction works, without receiving the official Polish contract. The contracts did not specify the type of work they should perform; neither did they provide details on the conditions of work. Payment was stated to be dependent on the work performed. The contract did refer to penalties for the employee in case of violations (500 zloty (€ 116) for one violation). The employer's representative stated that the contracts were drawn up in accordance with Polish law. After signing the contracts, some of the Belarusians were sent by the Polish employer to work in Sweden. In Sweden, the workers worked for 10 hours or more a day, seven days a week. Wages were only partially paid. The employer refused to pay the rest. When the workers began to resist, the leadership ordered 'a brigadier' to take the Belarusians out to the forest and leave them there. But the brigadier took them to the ferry, to enable them to get home. The Belarusians returned home, understanding that they would not receive their salaries, not knowing how to claim justice.

One of the Belarusians contacted the employer's office in Poland to find out about the salary. The employer asked him to show the document on the basis of which he came to work in Poland. The Belarusian gave him the original declaration of intent to employ, which the employer then tore up, after which he told the guards to remove the Belarusian from the office. La Strada Belarus wrote individual complaints to the Polish Labour Inspectorate, based on the complaint of the workers. In addition, according to reports of the victims, more than 15 individual appeals were sent to the Labour Inspectorate of Poland. The Labour Inspectorate carried out a special inspection, after which the Belarusian workers were asked to apply to court and demand for payment of wages. Taking into account the fact that not only citizens of the Republic of Belarus (as well as citizens of Ukraine, Moldova and Poland) have been in the same situation (non-payment of wages, deportation), on behalf of all the victims (31 people) an appeal was sent to the Prosecutor's Office of Gdansk. Testimonies of workers have been taken and one employer has been arrested. The case is still pending. In March 2019, a study visit will be conducted by Belarusian stakeholders to Gdansk to collect more information on the case and strengthen cooperation with Polish counter parts.[166]

166 Information provided by Gender Perspectives/La Strada Belarus, February 2019

4 Stakeholders in Poland

This chapter outlines the main actors in Poland responsible for addressing issues of human trafficking and other forms of labour exploitation in the country, both governmental and non-governmental actors, including those providing direct services to migrant workers and (presumed) trafficked people.

4.1 National Referral Mechanism

There is no official formal National Referral Mechanism (NRM) on the issue of human trafficking established in Poland, neither is a document available describing the task division of each stakeholder. However, in practice, there is cooperation among all relevant stakeholders and they are well aware of each other's services. Every couple of years, a new National Action Plan is adopted, which describes the activities to be undertaken by different stakeholders. The last Plan was adopted in 2018 for the period 2019 - 2021.

So far, trade unions in Poland are not part of the National Action Plan on human trafficking, neither are they much engaged in the informal referral structure in place. The same goes for migrant rights and alternative workers' rights organisations.

Poland is divided into 16 voivodeships (regions/provinces), which have all established their own local stakeholders' groups (regional teams) involved in the implementation of the National Action Plan and measures on combatting human trafficking. These 'voivodeship' teams comprise of: local authorities, law enforcement including border police, Labour Inspectorate, centres for social support, prosecutors and NGOs active at the regional level on prevention of trafficking or assistance to victims. These teams fall under the responsibility of the regional government.

Selected actors involved in the fight against human trafficking in Poland

Source: designed by HNLAC

4.2 The Committee for Combatting and Preventing Trafficking in Human Beings

Until recently an inter-ministerial body responsible for coordinating the anti-trafficking policy in Poland, the Committee for Combatting and Preventing Trafficking in Human Beings, was in place. Its role was to develop and adopt the National Action Plan and other strategic policy documents, determining measures to address human trafficking by the different agencies and to coordinate its implementation.[167] Next to this committee, which comprised representatives of different government entities, as well other invited institutions and NGOs, a smaller working group was established consisting of experts representing institutions participating in the committee's work and who were responsible for monitoring progress and implementation. The committee and the working group fell under the Migration Policy Department of the Ministry of Interior. Meetings were organised quarterly and NGOs (La Strada Poland, PoMOC, Nobody's children, ITAKA, You Can Free Us) were invited to participate. However, this body was liquidated in December 2018. A new body is going to be created in 2019.

Since 2016 NGOs have raised concerns about staff changes and staff and financial cuts at the national governmental unit mandated to address human trafficking.[168] Recently though, NGOs have reported some improvement. [169] The Unit for Combatting and Preventing Trafficking in Human Beings has been closely cooperating with the provincial entities (voivodeships). They have developed regional coordination platforms which coordinate the actions of various institutions and organisations in their region, and "facilitate common initiatives and exchange of information and good practices on prevention and support for victims."

4.3 Responsible governmental ministries

The Ministry of Interior and Administration provides administrative and general support to the Committee for Combatting and Preventing Trafficking in Human Beings. It also funds the National Consulting and Intervention Centre, providing security and support to presumed and identified victims of human trafficking, which is run by the NGOs La Strada Poland and PoMOC. See more information below.

Other relevant ministries with a role in preventing and combatting human trafficking include the Ministry of Family Labour and Social Policy; Ministry of Foreign Affairs; Ministry of Health, and the Ministry of Education.

4.4 Police and border police

The police have a specialised Unit to Combat Trafficking in Human Beings within the Criminal Service Office of police headquarters. This Unit for Combatting Trafficking in Human Beings cooperates with the judiciary, public administration, NGOs and social and public services and cooperates with law enforcement authorities in other countries. In Poland the police, border guard or prosecutor can issue a certificate confirming the existence of a presumption of victimhood – in which case a stay on Polish territory is regarded as legitimate for a period of three months (and four months if the foreigner

167 http://www.handelludzmi.eu/hle/institutions/interministerial-commit/6193,Committee-for-Combatting-and-Preventing-Trafficking-in-Human-Beings.html
168 Fact finding mission Poland, March 2019
169 Information provided by La Strada Poland, 2019

is a minor) as a 'reflection period' to decide whether they want to report the crime as human trafficking.[170]

4.5 Labour Inspectorate

The Polish Labour Inspectorate has controlled the legality of foreigners working in Poland since 2007, making inspections to verify whether the labour law is respected and the rights of workers, including health and safety protection, are violated by employers. Prevention programmes are carried out involving employees and workers, and the Inspectorate can take action if they decide rights have been violated.

Inspections of industries and establishments with high vulnerabiity risks are given priority. The Inspectorate should further investigate the circumstances and causes of accidents at work, reported by employers - according Article 234 paragraph 2 of the Labour Code - and others.

When inspecting the legality of employment and employment of foreign nationals, labour inspectors check whether there are indications of forced labour. In 2008 and 2015 agreements were signed between the 48 border guard Chief Commanders and the Chief Labour Inspector, with the aim of strengthening the capacity of labour inspectors to respond to the illegal employment of foreign nationals and to the phenomenon of trafficking in human beings. According to the Labour Inspectorate, "the agreements offer a basis for cooperation in undertaking joint inspections by border guard officers and labour inspectors, and for exchanging information on violations of the law concerning foreign nationals, including cases of irregular employment."

According an agreement concluded in 2014, cooperation and exchange of information takes also place between the national Labour Inspectorate units and the prosecutors' offices.

4.6 NGO feedback on role of the Labour Inspectorate

NGOs oppose the fact that inspections are carried out both on labour law violations, and the legal status of workers. This means that workers cannot safely report abuse without fear of repercussions. NGOs therefore call for a clear firewall between the two, which would allow vulnerable workers to report exploitative practices without fear of deportation or arrest. Currently, when third country nationals file a complaint against an employer, they have to be cautious about the fact that the Labour Inspectorate forwards information about their legal or work status to the border police, which most likely results in an obligation for them to return to their home country. It also puts their co-workers in similar danger.

Labour inspectors are limited in their powers during inspections: they are merely allowed to inspect the premises, ask for the files and talk to people they find in the workplace. They can only rely on documents given to them by an employer, which means that if they are not given papers for some workers – who hide during inspection – they have no way of discovering them. Labour inspectors are not prepared to use foreign languages nor have they any options available to use interpreters. In addition, the Labour Inspectorate in Poland is seriously underfunded, with more and more tasks being put on them every year.[171]

170 Law on Foreigners 12 December 2012, in force since 1 May 2014

171 Feedback provided by the Association for Legal Intervention (SIP), May 2018

4.7 NGOs that are part of the national framework against human trafficking

There are several NGOs active on addressing the issue of human trafficking and supporting victims, both at national or at local level. The ones mentioned below are the most well-known, and are also part of the Committee for Combatting and Preventing Trafficking in Human Beings. They support government agencies and institutions in their actions against human trafficking, providing support to victims and raising social awareness. Often they also fulfil a more critical watchdog function and try – via lobbying and advocacy – to ensure more accountability by the government.

- The La Strada Foundation against Trafficking in Persons and Slavery (La Strada Poland) is a specialised and professional expert and advisory centre on the issue of trafficking in human beings. The organisation works in particular on lobby, prevention and direct social assistance to victims of human trafficking. La Strada provides trafficking victims with support in the form of accommodation, food, psychological and legal counselling and accompanying clients during contact with law enforcement and judicial authorities. Foreign clients also receive support in legalising their stay. The organisation helps victims in getting their unpaid remuneration back.

- Empowering Children/Dajemy Dzieciom Siłę (formerly: Nobody's Children Foundation) organises training programmes related to child abuse for various professional groups and interdisciplinary teams, and provides psychological assistance to unaccompanied children and child victims of trafficking.

- The Halina Nieć Legal Aid Center's aimes at preventing and tackling human and child trafficking by organising social campaigns and offering free legal aid to victims.

- ITAKA Foundation seeks missing persons and helps the families of trafficked persons or persons who have or lost contact with family.

- Caritas Poland supports women who were forced into prostitution or forced labour.

4.8 Other relevant NGOs

- The Association for Legal Intervention (SIP) provides legal counselling and information to migrants and refugees regardless of their legal status. They have so far assisted around 1,100 clients, around 40 per cent of whom were refugees and asylum seekers and 60 per cent other migrants. SIP informs them about the consequences of irregular work (risk of being deported). Based on the situation of each individual, SIP decides with them the best actions to take, e.g. to go to the Labour Inspectorate etc. SIP is not conducting fieldwork. SIP registers files and complaint cases, and once created a 'blacklist of employers' to ensure that practices cannot be repeated. However, the number of employees who want to address the issue of exploitation is rather small, as most workers do not want to make an official complaint.

- The NGO Nasz Wybor registered in 2009 and focuses on integration and protection of migrants, supporting them to have access to information in order to obtain their rights. They publish a daily online newspaper and a monthly magazine in Polish and Ukrainian. For several years the organisation has run the 'Ukrainian house', which includes a legal advice and consultation desk where migrants, in particular Ukrainians, can get advice and legal support to find employment, education, housing, or obtain a legal status and/or other issues related to their integration. Awareness raising and prevention programmes are also carried out. Some related information campaigns have been conducted by the organisation. The services of Nasz Wybor are free.

Most of the NGOs active in Poland suffer from a lack of adequate financial support, also due to the fact that EU-funded programmes (such the Asylum, Migration and Integration Fund (AMIF)) were postponed or frozen. They are often surviving on international project funding. There are also several other migrant rights organisations in Poland. There are also increasingly new organisations that are partly initiated by migrants themselves to assist migrant workers.

4.9 National Intervention and Consultation Centre for Victims of Trafficking

La Strada Poland, together with the Catholic support organisation PoMOC,[172] runs the National Intervention and Consultation Centre for Victims of Human Trafficking, which is actually financed by the Ministry of the Interior through a tender process that the government launches annually. Together the organisations have so far managed to obtain annual grants of around € 250,000 – 275,000. The National Intervention and Consultation Centre is not an established centre, but refers to the core support work and shelters of both organisations for victims of trafficking. PoMOC has a shelter run by nuns and offers accommodation for up to six adults (women only) and their children. La Strada Poland also runs a shelter. Under the tender contract, the NGOs provide comprehensive support to victims of trafficking, including services such as counselling intervention, accommodation, medical care, legal and psychological aid.

4.10 National Network of NGOs Against Human Trafficking

The National Network of NGOs Against Human Trafficking is established and led by the La Strada Foundation in Poland. It was set up to improve the quality and effectiveness of NGO work, professionalise activities and strengthen capacity in order to partner with public institutions and law enforcement authorities in joint activities aimed at preventing and combatting human trafficking. Tasks include:

- Strengthening the regional bodies responsible for combatting trafficking in human beings.
- Developing standards for the provision of services for victims of trafficking (especially around safety, privacy and respect for the choices of victims).
- Organising a series of workshops on the subject of human trafficking for NGOs.

172 www.po-moc.pl/

4.11 Trade unions

Trade unions are not part of the regional stakeholders' group, nor are they part of the formal National Action Plan to prevent trafficking. So far they are not directly or formally involved in addressing the issue of human trafficking, however there have been some attempts by stakeholders to involve trade unions more.

OPZZ is one of the two biggest trade unions in Poland. They have around 600,000 members, similar to the other well-known trade union, Solidarność. OPZZ has a head office in Warsaw with around 20 staff members. Additionally, there are offices in each of the 16 regions, mostly staffed by two people, including legal advisors. OPZZ also comprises separate unions in different sectors, such as a union for teachers for example.

Acknowledging that many Ukrainian and other migrant workers are coming to Poland and need support and information, OPZZ initiated a helpdesk in June 2016.

As part of this research, a representative of OPZZ stated that trade unions should support workers who are non-nationals and non-members of the union, something they don't currently do. However, as the trade union has limited resources, there are also limits to the support on offer. Moreover, as in Bulgaria and Romania, the trade union has limited access to workers in non-regulated sectors, or sectors where trade union membership is low. OPZZ would like to set up more cooperation in vulnerable sectors such as retail, construction and agriculture, where their membership is low.[173]

La Strada Poland has stated that they receive questions from workers who need support, although as they are not trafficked (La Strada's main focal point) they would like to refer such cases to the trade unions. So far, however, there is little referral and cooperation between the two major trade unions and anti-trafficking and migrants rights NGOs. Instead, there are other alternative workers' rights initiatives that have been more open to cooperation with other NGOs, for example the organisation 'Workers' Initiative' (Inicjatywa Pracownicza).[174]

4.12 Recruitment and employment agencies

There are two types of employment agencies active in Poland: temporary work agencies and intermediary agencies. The former directly recruits workers, and takes responsibility for registering declarations of intent to employ. The latter simply mediates between workers and employers, meaning that the final employer still has to register the declaration of intent to employ. There are different ways of recruiting workers:

- Recruitment carried out by individual recruiters acting either for specific employers (business) or for other agents.
- Recruitment carried out by employment agencies operating in the countries of origin.
- Recruitment carried out by Polish employment agencies in the countries of origin.
- Within so-called 'export service' schemes (aimed at gaining a qualified specialist for the purpose of performing a specific task or carrying out specific activities within an indefinite period of time).[175]

173 Fact finding mission Poland, February 2017

174 http://www.ozzip.pl/

175 *Human Trafficking for Forced Labour in Poland – Effective Prevention and Diagnostic of Mechanisms*, Adstringo, 2014.

Most frequently, workers are not recruited in the country of origin but at the moment they arrive in Poland. According to a research report of 2014, in a city near Warsaw (Piaseczno), specific 'human fairs' take place every Tuesday and Thursday morning, where potential foreign employees meet their potential local employers.[176] Respondents interviewed for the 2014 research spoke about "the importance of recruitment and employment agencies in both creating and preventing migrants' vulnerability to labour exploitation. When highlighting agencies' wrongdoing, they spoke about indifference to the workers' situations."[177]

NGOs have reported that some recruitment agencies in Poland, known for recruiting mostly in Ukraine or Belarus, have started to look for workers in other Asian countries, including Nepal and India.

176 Ibid

177 http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_pl.pdf

5 Summary and conclusions

Poland is a country of origin, transfer and destination for victims of human trafficking. There still seems, however, to be more focus on preventing Polish citizens being trafficked abroad than there is on the prevention of exploitation of migrant workers within the country. Figures for human trafficking are registered and include both foreign and national citizens. National citizens are trafficked within the country, or registered upon return after a trafficking experience abroad. There are no available statistics or much knowledge about the scale of other forms of labour exploitation occurring in the country, including forced labour. The Labour Inspectorate reports figures on inspections and violations of the labour code and other employment regulations, including the detection of irregular work.

Poland ratified all-important international legislation that addresses human trafficking and/or forced labour. However, although the penal code criminalises human trafficking, forced labour is not criminalised as a separate offence and can therefore not be prosecuted without proving human trafficking. Academics and NGOs have been lobbying for a couple of years now for the creation of a separate criminal offence on forced labour. It seems this issue is now getting more attention from government actors.

Currently labour exploitation is mainly addressed as labour code violations via administrative and labour court procedures. There is also legislation that penalises the exploitation of third country nationals in Poland, in cases when they are irregularly employed, related to Poland's compliance with the EU Employers Sanctions Directive.

In general, prosecution of (human trafficking for) labour exploitation cases lags behind and there are clear indications that there are many more migrants vulnerable to labour exploitation and abuse in Poland, but who currently lack adequate protection. Due to increasing economic growth and demand for foreign workers, the government has been more open to welcoming migrants from Ukraine, Belarus, Moldova, Russia, Armenia and Georgia, as well as from Asian countries such as Vietnam.

Citizens from the six former Soviet Union countries can work temporarily – for a period of up to nine months – in the country on the basis of a statement by an employer, which allows them to obtain a Polish (work) visa.

This has created a situation of dependency between migrant workers and their employers, making them more vulnerable to exploitation and abuse. Although stricter requirements are in place regarding registering an employer's declaration of intent to employ third country nationals, it is still possible for employers to offer civil contracts without being obliged to follow the labour law. NGOs, trade unions and other stakeholders have reported frequent abuse, no or low payment of workers, as well as other violations including the absence of working contracts, withholding of contracts or personal documents, and the charging of all kinds of costs for housing, food, transport etc, which is deducted from salary payments. Workers are forced to work long hours and often live in bad conditions.

These and other migrants, as well as other national groups, are not profiting from Poland's economic growth. Migrants seem welcome mainly to fulfil the demand for cheap and exploitative labour, as the current government has been mainly promoting anti-migration and anti-refugee rhetoric since it came to power in 2015. NGOs complain about the lack of sufficient governmental commitment to support the integration of different migrant groups

recently arrived in the country. Government funding for programmes has been cut, stopped or frozen, including funding for legal support, professional counselling, psychological assistance and other services. Measures taken by the ruling party have also been criticised for undermining the rule of law, the freedom of the media and an independent civil society. This – alongside Poland's refusal to accept refugees for resettlement – has been the reason the European Commission launched two different infringement procedures against Poland in 2017.

More action is needed to support workers in the most vulnerable sectors such as fruit picking and construction, to reach out to them and provide them with the information and protection they need. In addition, safe reporting and complaint mechanisms are needed to ensure that workers can safely file complaints, be identified and get support. As the Labour Inspectorate is also responsible for detecting illegal workers, workers hesitate to come forward with information on their exploitative situation. The current Polish system – where workers are dependent on their employer – encourages employees not to take legal action against their employer. Even though the Labour Inspectorate has powers to file lawsuits in the name of employees against employers, this happens very rarely and the risk of being reported to the border police remains valid. In addition, legal proceedings in courts are very lengthy. There are as yet no legal effective tools to address dishonest intermediaries and recruitment agencies.

There are various stakeholders active in Poland. Partly their role is defined, although there is no formal National Referral Mechanism established that can describe the role of all stakeholders.

This research has found that there is not yet enough awareness and support for vulnerable workers from the main stakeholders, and cooperation among some relevant stakeholders is lacking. NGOs are losing capacity due to cuts in funding, while the Labour Inspectorate and other governmental bodies are understaffed. Trade unions are only just starting to take interest in the protection of migrant rights, but they also face capacity problems and declining membership.

Some positive new developments were noted around alternative workers' rights organisations and NGOs set up by migrant workers themselves to improve information provision and legal support to workers. Workers' rights NGOs and trade unions are not yet fully engaged in the anti-trafficking framework though. In addition, adequate cooperation between trade unions and migrant rights and counter-trafficking NGOs remains lacking.

6 Recommendations

Based on the Rights at Work assessment and activities the following recommendations can be made:

1 More prevention strategies are needed to address severe forms of labour exploitation, as well as raising awareness amongst all relevant stakeholders.

2 The government should refrain from cooperation with countries that make systematic use of forced labour, and ban the employment of North Korean workers.

3 Control mechanisms should be set up to monitor business compliance with labour standards and human rights and to make the private sector more accountable; incentives should be provided for companies that comply, while enacting sanctions for businesses that do not respect human rights.

4 Decent working conditions should be promoted and it should be ensured that informal and unregulated work is brought within the protection of labour laws, and that labour rights are applied to all workers irrespective of migration and residence status.

5 There is a need to increase migrant workers' awareness of their rights by means of information campaigns organised by the state, public institutions, trade unions and NGOs via social media and institutions in Poland as well as migrant workers' countries of origin.

6 To increase the identification of severe labour exploitation cases, adequate labour inspections should be ensured with sufficient capacity.

7 Better monitoring of vulnerable sectors and outreach to workers is needed, including increased workplace inspections and better control of the implementation of temporary visa regulations, including 'declarations of intent to employ'.

8 Inspections of violations of labour laws should be delinked from the control of residence status of workers, so that workers have an opportunity to report exploitation without fearing arrest and deportation. Safe reporting and adequate complaint mechanisms should be in place to encourage victims to report cases of labour exploitation.

9 Improve the dialogue between workers, employers and worker support initiatives. Trade unions should make workers more aware of what unions can do to defend their rights and encourage migrants to join them, since they have legal means of protecting workers.

10 All victims of labour exploitation, including victims of human trafficking and forced labour, should have access to remedy through judicial, administrative and legislative means.

11 Improved criminal justice responses are needed to reduce the number of ineffective investigations that do not result in prosecution. Sentence convicted perpetrators to penalties proportionate with the severity of the crime.

12 Increase training of law enforcement on investigating and prosecuting labour trafficking cases and consider creating specialised prosecution units for trafficking crimes.

13 Improve training and efforts among all relevant stakeholders to identify victims proactively, particularly among unaccompanied children, migrants/refugees and other vulnerable groups.

14 Improve central operational coordination by ensuring an adequate coordination structure involving all relevant actors with agreements on responsibility, e.g. by establishing a National Referral Mechanism. Trade unions and migrant rights NGOs should be more engaged in common action.

15 Compile and provide comprehensive and coherent statistical data on human trafficking, forced labour and other forms of labour exploitation, including on investigation, prosecution and adjudication of human trafficking cases.

16 Ensure adequate funding for NGOs and for implementation of policy actions and measures taken, including for the implementation of the National Action Plan on human trafficking.

17 Review the existing legal provisions and court rulings on forced labour with a view to extending the scope of forced labour to include working conditions contrary to human dignity, in line with the ILO indicators of forced labour.

In focus: Bulgaria

1 National context

This chapter describes the political, social and economic situation in Bulgaria, as well as access to employment and demand for workers, related to migration to the country. The vulnerability of workers and various labour sectors is also reviewed.

1.1 Political and social situation

Over the last five years Bulgaria – similar to many other post-socialist countries – has seen a period of political turmoil with a series of unstable governments and politicians accused of corruption, which has undermined democratic processes and posed numerous political challenges. This has also impacted on the country's judicial system. Since 2013, no government has been in power in Bulgaria for the full mandate of four years. Since the last elections in March 2017, a coalition government of the conservative and populist political party GERB[178] and the nationalist 'United Patriots' party has been in power, with just a small majority in parliament (122 of 240 seats). Political discontent remains high, especially over the slow progress in combatting corruption, social welfare issues and state promotion of corporate interests.[179]

1.2 Economic situation and employment

Over the last few years, Bulgaria's economy has been growing steadily and wages have increased. The official unemployment rate declined from 6.3 per cent in 2017 to around 5 per cent in 2018,[180] and is expected to decrease further.[181][182] It is, however, believed that the actual unemployment figure is much higher than official statistics indicate, as only those registering with an unemployment centre are counted and many do not register; they do not see the added value as unemployment income is low.[183] One recruitment agency interviewee stated that 1.5 million people are estimated not to be working.[184] An NGO representative further reported that unemployment among some Roma communities is expected to be as high as up to 90 per cent[185] and that these people are only surviving on social benefits,[186] due to lack of opportunities. However, it should be noted that Roma comprise diverse groups, and that parts of the community are well integrated and employed.

178 GERB (Bulgarian: ГЕРБ, Граждани за европейско развитие на България, "Citizens for European Development of Bulgaria") is a conservative, populist, Bulgarian political party established on 13 March 2006. The initials of the party герб/gerb also translate as 'coat of arms' in Bulgarian. It is Bulgaria's second-largest party by membership.

179 Information is based on reports from Freedom House – Bulgaria report 2017; *Report From The Commission To The European Parliament And The Council On Progress in Bulgaria under the Cooperation and Verification Mechanism* – November 2018; CEE Country Report Bulgaria 2017 https://group.atradius.com/publications/country-report-cee-bulgaria.html and https://www.cipe.org/blog/2017/08/04/democratic-backsliding-in-bulgaria/ and https://www.cipe.org/resources/democratic-backsliding-bulgaria/ and Amnesty International 2017/2018 report on Bulgaria

180 In the third quarter of 2018 the unemployment rate was 5.0 per cent and the employment rate of population aged 20 - 64 was 73.5 per cent. See website of Bulgarian National Statistical Institute http://www.nsi.bg/en

181 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-bulgaria-en.pdf

182 https://www.investor.bg/evropa/334/a/bezraboticata-v-bylgariia-spadna-do-rekordno-nivo-265657/

183 Meeting with a representative of Manpower Bulgaria – fact finding mission March 2017

184 Meeting with a representative of Manpower Bulgaria – fact finding mission March 2017

185 There are no though no figures available to confirm the unemployment figure among Roma

186 Meeting Roma rights organisation - fact finding mission March 2017

Clearly, however, not everyone benefits from the new economic growth and more positive labour market. In particular, "those living in poorer regions and rural areas continue to face significant difficulties in obtaining work."[187] The overall rate of young people not in employment, education or training remains high; around 12.9 per cent in 2017, according to the Bulgarian National Statistical Institute,[188] although this figure declined in 2018. Skills shortages and mismatches between available workers and jobs offered remain a challenge,[189] as does the level of undeclared work. Moreover remuneration for employment, including the minimum wage, is low, in particular in comparison to other European countries.[190]

Bulgaria still has one of the highest levels of poverty and income inequality in the EU. A European Commission country report on Bulgaria stated that in 2016, 40 per cent of the population was at risk of poverty or social exclusion, and that around one in ten people employed was at risk of not being entitled to sickness or unemployment benefits. Often workers, in particular self-employed and seasonal workers, do not have access to unemployment protection, nor to adequate workers' rights and payment,[191] which gives reason for complaints. In October 2017, around 10,000 Bulgarian workers marched through the streets of the capital Sofia demanding decent incomes and workers' rights. This protest was initiated by members of the Confederation of Independent Trade Unions (CITUB/KNSB) from all over the country.[192]

1.3 Levels of trade union organisation

As in other European countries, Bulgarian trade unions face declining memberships. Still, around 20 per cent of Bulgaria's employees are union members.[193] In comparison the average density of trade unions for the 28 EU member states is estimated at 23 per cent.[194] There are two main trade union confederations in Bulgaria. The larger is KNSB (the English abbreviation is CITUB – Confederation of Trade Unions in Bulgaria), which emerged from the reformed official trade union movement of the Communist period. The second is Podkrepa,[195] which came out of the opposition movement. Both confederations are affiliated with the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC). According to an interview with a representative of the trade union Podkrepa conducted for this report,[196] unions do not have much access to unregulated

187 *European Commission Staff Working Document - Country Report Bulgaria*, March 2018 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-bulgaria-en.pdf

188 http://www.nsi.bg/en/content/6503/unemployed-and-unemployment-rates-national-level-statistical-regions-districts

189 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-bulgaria-en.pdf and https://www.investor.bg/evropa/334/a/bezraboticata-v-bylgariia-spadna-do-rekordno-nivo-265657/

190 In 2019, the national minimum wage in Bulgaria remained fixed at 286.3 € per month. https://countryeconomy.com/national-minimum-wage/bulgaria

191 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-bulgaria-en.pdf

192 http://www.industriall-union.org/thousands-protest-to-demand-better-wages-in-bulgaria

193 Figures from the unions themselves suggest there are around 400,000 trade unionists in Bulgaria, and the latest official census of trade unions, undertaken in 2012, produces union density figure of around 18 per cent of all employees, although this does not include trade unionists outside the two main union confederations. Figures from the ICTWSS database of union membership put union density at 19.8 per cent in 2009 – see https://www.worker-participation.eu/National-Industrial-Relations/Countries/Bulgaria/Trade-Unions

194 Levels of union density vary widely across the 28 EU states plus Norway, from around 70 per cent in Finland, Sweden and Denmark to 8 per cent in France. The average level of union membership across the whole of the European Union, weighted by the numbers employed in the different member states, is 23 per cent. In most countries union membership has been falling in recent years. See https://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions

195 See more information on Podkrepa at http://podkrepa.org/

196 Interview with a representative of Podkrepa - fact finding mission March 2017

economic sectors in Bulgaria, and already have difficulties reaching out to workers in some regulated sectors, such as workers who work for small companies, or in the agricultural sector where many temporary and seasonal workers work.[197] In the Bulgarian agricultural sector workers can be employed even on one-day contracts.[198] The weak levels of labour organisation, especially in sectors vulnerable to exploitation (see below), make identification of exploitation and redress very difficult, exacerbating bad to exploitative working conditions in Bulgaria.

1.4 Emigration and demand for workers

The weak economic and social situation of the past has resulted in many people leaving Bulgaria over the last 15 years, in particular after Bulgaria's accession to the EU in 2007. This accession created freedom of movement for Bulgarians to work in other EU countries,[199] where they could earn more. This led to a so-called 'brain-drain', with many educated young people leaving the country to work and live abroad.[200] Although levels of emigration have fallen as the economy has grown, the National Statistical Institute (NSI) reports about 25,000 – 30,000 people still leaving each year,[201] including students pursuing higher degrees abroad and graduates in computer science, engineering and medicine – but also many low skilled workers. The most preferred destination countries for Bulgarians are Germany, the United Kingdom and Spain.[202]

Although 'outward migration' has slowed[203] and an increase of 'inward migration' is noted, shortages of workers in several labour sectors have been reported.[204] Recruitment and employment agencies state that it is hard to find national or migrant workers for employment in various labour sectors. With the growing economic prospects, they and other private sector actors call upon the government to ease access for migrant workers to the labour market and to promote initiatives, such as circular migration programmes, to fill labour shortages.[205]

Trade unions such as Podkrepa and KNSB (CITUB) partly dispute these claims around the need to recruit foreign labour. According to them, official data shows that the total amount of vacant positions in Bulgaria is actually much lower than the registered number of

197 Ibid

198 The revision of the Bulgarian Labour Code, approved by the parliament on 2 July 2015, introduced one-day labour contracts in agriculture, which gave farmers the option to conclude one-day employment contracts with workers for the harvest of fruits, vegetables and roses, for jobs that require no special training. https://www.eurofound.europa.eu/sr/publications/article/2015/bulgaria-one-day-labour-contracts-introduced

199 Regardless some restrictions on rights to work and claim benefits, imposed by some EU member states until 2014 for workers from Romania and Bulgaria.

200 According to a report of the European Commission of 2018, the population is expected to shrink by as much as 22 per cent by 2050 (Graph 4.3.1) due to net migration, low birth rates and relatively high mortality. European Commission - COMMISSION STAFF WORKING DOCUMENT Country Report Bulgaria 2018 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-bulgaria-en.pdf

201 See statistics provided by Bulgarian National Statistical Institute (NSI) http://www.nsi.bg/en/content/13040/international-migration-age-and-citizenship-migrants

202 According to figures of NSI published in April 2018, 31,586 people emigrated from Bulgaria in 2017, while 25,597 persons migrated (including nationals who migrated back) to Bulgaria. http://www.nsi.bg/en/content/6683/migration

203 Bulgaria's population has shrunk by two million to 7.1 million since 1990, according to a consensus of local experts. The country's birth rate is below the EU average, while its death rate is the highest. https://www.ft.com/content/51f1bd86-d6cc-11e7-ae3e-563c04c5339a

204 Interview representative Manpower – fact finding mission March 2017 – representative stated that the population diminishes each hour by six people, which is seen as an important factor in the lack of sufficient adequate workers.

205 Interview representative Manpower – fact finding mission March 2017

unemployed people. The unions believe more should be done instead to activate the inactive part of the national workforce for employment. Similarly, the World Bank stated in 2018 that, "with the right mix of active labour market policies and social services, groups such as educated but inactive young people, low-skilled long-term unemployed middle-aged men and long-term unemployed women with caring responsibilities, could be better integrated in the labour market."[206]

Trade unions have further raised concerns about misconduct by the private sector, with reported cases of migrant workers recruited to work in Bulgaria but instead sent to work in France or other EU countries.[207] This is done via so called letter-box companies and the use of loopholes in legislation. Criticism has been raised by unions and others that the call for foreign workers might be mainly made out of demand for cheap and exploitative labour; as it is believed that migrant workers can be paid less than national workers. And so, instead of providing decent conditions for work and a living wage, employers prefer to import workers from countries where salaries are even lower.[208] In an interview representatives of Podkrepa and KNSB stated: "The minimum wage in the country is traditionally the lowest in the EU, just € 261 before tax. But a large number of Bulgarian workers do not have labour contracts. In this situation, it can hardly be expected that employees from similarly or more developed countries will choose to come."[209]

1.5 Migrants in Bulgaria

Regardless of the call for migrant workers, there is still a relatively low number of migrants – including refugees and economic migrants – in Bulgaria, in comparison with other EU countries. The general low standards of income in the country, with Bulgaria still being one of the poorest countries in the EU, alongside the slow procedures of granting asylum and refugee status and the postponement of entry to the Schengen area, have made migrants not very keen to settle in Bulgaria. They mainly plan to transit the country, aiming to work in other more prosperous Western European countries.[210] Nevertheless, migration figures are on the rise. In the last decade many private businesses have been opened by citizens of Russia, Ukraine, Turkey, China, Bosnia and Herzegovina and from countries in the Middle East, notably Syria and Lebanon. Since 2014 migrant flows have increased, particularly during the autumn of 2015 when thousands of people travelled along the Balkan route every week.[211] In comparison to 2015 – 2016, the number of migrants in Bulgaria slightly declined in 2017 – 2018.

206 *Commission Staff Working Document Country Report Bulgaria* 2018 - https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-bulgaria-en.pdf

207 https://www.euractiv.com/section/economy-jobs/opinion/more-social-dumping-comes-to-europe-through-bulgarias-door/

208 https://www.euractiv.com/section/economy-jobs/opinion/more-social-dumping-comes-to-europe-through-bulgarias-door/

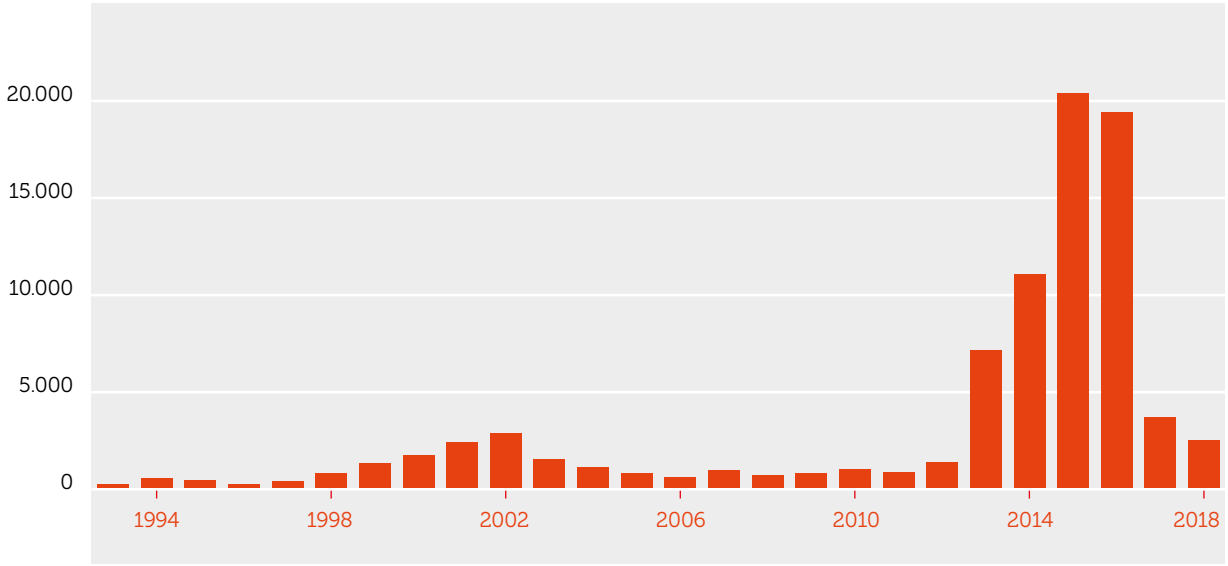
209 Interview with representatives of the trade unions Podkrepa and KNSB – see article *More Social Dumping Comes to Europe Through Bulgaria's Door* https://www.euractiv.com/section/economy-jobs/opinion/more-social-dumping-comes-to-europe-through-bulgarias-door/

210 Interview Manpower – fact finding mission March 2017

211 ICMPD, *Bridging the Gap Between Migration, Asylum and Anti-Trafficking,* 2018

A total of 11,888 non-European migrants were registered in 2017 according to data from the National Statistical Institute.[212] According to UNHCR, a total of 19,184 refugees were registered in Bulgaria by the end of 2017.[213] Statistics from the Bulgarian State Agency for Refugees show that in the year 2017, 3,700 people applied for asylum; in particular Afghans, Syrians, Iraqis, Pakistanis and Iranians. Refugee status was granted to 804 people, with 64.2 per cent of applications rejected.[214] In 2018 a total of 2,536 asylum seekers were registered.[215]

As noted, third country national migrants, including refugees, come in particular from the Middle East including Syria, Afghanistan, Iran, Iraq; from South Asia, in particular from Afghanistan and Pakistan; as well as from Africa, including Morocco, Tunisia, Mali, Niger, Nigeria, Chad, Eritrea and Somalia.[216]



Total number of applications for international protection submitted 1993 – 2018.
Source: Bulgarian State Agency for refugees.

"Although Bulgaria committed to accepting 1,302 asylum seekers from Greece and Italy under the EU emergency relocation scheme, the country had only resettled 50 people from Greece by the end of 2017," according to reports from Amnesty International.[217]

1.6 Access to labour for migrant workers

There are no particular restrictions on the employment of nationals from the European Economic Area (EEA) countries. Third country citizens require a work permit for employment in Bulgaria. In 2015, a new act was enforced that refers to foreigners and their work permit in Bulgaria. This act stipulates that once a foreign resident receives a work permit they have equal access to work, benefits, access to the same remuneration, working conditions and social security as Bulgarian national citizens. However, it should be noted

212 Data from the National Statistical Institute - http://www.nsi.bg/en/content/13040/international-migration-age-and-citizenship-migrants
213 UNHRC, *Global Trends - Forced Displacement* 2017
214 Bulgarian State Agency for Refugees (SAR) 2017
215 Aida Asylum Information data base (AIDA) Bulgarian report 2019 https://www.asylumineurope.org/reports/country/bulgaria
216 Bulgarian State Agency for Refugees (SAR)
217 Amnesty International Report 2017. *The State of the World's Human Rights*, 2018

that work permits have mainly been provided to highly qualified foreign specialists, who apply for the Blue card to work in specific sectors and for specific skilled jobs. This option is only possible for those with university degrees and an adequate position that is already proposed by their future employer.[218]

Asylum seekers have access to the labour market when the procedure for determining their status takes longer than three months from the moment of submission of the asylum application. According to a report of the Bulgarian Helsinki Committee, "the permit is issued by the State Agency for Refugees (SAR) itself in a simple procedure that verifies only the duration of the status determination procedure and whether it is still pending." In January 2018 the government tried to amend the legislation, aiming to condition asylum seekers' access to the Bulgarian labour market. However, this was apparently prevented through a joint lobby of the SAR, UNHCR and non-governmental organisations. The current work permit allows access to all types of employment and social benefits, including unemployment support. No labour market test is required and access is not limited to certain sectors. Under the law, asylum seekers also have access to vocational training. In 2018, the SAR issued 134 labour permits to asylum seekers.[219]

In general, work permits for third country nationals are mostly issued in the form of a combined work and residence permit. The procedure for obtaining such a "single permit" starts with the prospective employer in Bulgaria applying for approval to the local office of the National Employment Agency. In order to obtain approval, the employer must generally demonstrate that certain conditions were fulfilled, including that there is no legal requirement that the position in question must be occupied by a Bulgarian citizen. Further, the individual concerned should have a certain minimum level of education and/or possess special vocational qualifications and experience that meet the objective requirements for the job. If the National Employment Agency approves the application, it notifies the Migration Directorate at the Ministry of the Interior. The individual – after obtaining a visa at the Bulgarian embassy or consulate in his/her country of residence, if required – may then enter Bulgaria and apply to the Migration Directorate for a single permit.[220]

For certain groups of foreign citizens no work permit is required, including those who possess a long-term or permanent residence permit, those who have been provided a right of sanctuary, and/or refugees or those under humanitarian protection.[221] In reality it remains hard for asylum seekers to find employment due to general difficulties including language barriers. Professional qualifications obtained in the country of origin are generally not recognised. How many asylum seekers/refugees work in Bulgaria is not known. According to the Bulgarian Helsinki Committee no national agency collects statistics on the number of asylum seekers in employment.[222]

According to the Bulgarian Employment Agency, "there are migrants (including refugees from Syria) registered in their database, but as registration is voluntary, there is no information about the total amount of migrants looking for employment in Bulgaria."[223]

218 The signing of an employment contract with a foreign citizen is regulated by the following acts: the Foreigners in the Republic of Bulgaria Act (FRBA), the Labour Migration and Labour Mobility Act (LMLMA), the Regulations on the Application of the Labour Migration and Labour Mobility Act (RALMLMA)

219 Asylum Information Database (AIDA) – author Bulgarian Helsinki Committee – https://www.asylumineurope.org/reports/country/bulgaria

220 https://www.xperthr.nl/doc/416094/?param1=416094&param2=&t_anon=none&contentfree=#section-416094

221 For more information see https://www.ruskov-law.eu/bulgaria/article/hiring-foreigner.html

222 Asylum Information Data Base (AIDA) – author Bulgarian Helsinki Committee – https://www.asylumineurope.org/reports/country/bulgaria

223 Interview representatives Employment Agency, fact finding mission, March 2017

1.7 Migrants' vulnerability to exploitation

International human rights organisations, including Amnesty International, report that migrants, including asylum seekers, coming to Bulgaria are still subject to human rights violations and ill treatment, including detention and deportation.[224] In general migrants are vulnerable to exploitation, often due to a lack of access to adequate support or rights. This has been acknowledged by the Bulgarian National Commission for Combatting Trafficking in Human Beings and the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA).[225] In 2016, GRETA recommended that the Bulgarian authorities pay increased attention to the vulnerability of (undocumented) migrant workers and to "detecting victims of trafficking among foreign workers, asylum seekers and persons placed in immigration detention centres."[226] Back in 2014, the EU's Fundamental Rights Agency (FRA) published a report on severe forms of labour exploitation in Bulgaria,[227] and noted that migrants in the country are in general prone to labour exploitation.[228]

As mentioned above, refugees or those under humanitarian protection do not need a work permit and there is some integration support, however there is not much state support available, such as language courses or vocational training to enhance access to employment. Refugees face a lack of housing and a risk of homelessness, destitution and exploitation.[229] Having less access to decent living conditions and less chance of proper work, migrants are often more willing to accept low-income jobs and standards. It also forces them to undertake unlawful employment. [230]

Those who receive a negative final decision on their international protection application become irregular and are subject to deportation and often re-detention. Migrants who do not apply for asylum – and who have no other grounds to be in Bulgarian territory – are considered irregular and subject to deportation, with no access to healthcare, accommodation, education or any social services, or to legal employment.[231] In March 2012, when transposing the Employers' Sanctions Directive[232] into national law, Bulgaria criminalised employment of irregular migrants under certain conditions; "working conditions that substantially differ from the working conditions of lawfully employed persons and violate human dignity."

224 Amnesty and other human rights organisations documented numerous allegations of ill-treatment of refugees and asylum seekers and substandard conditions in detention facilities, including the issuing of deportation orders. Further, the general level of safety and security in the detention centres is stated to be low. See Amnesty Report 2017/2018

225 The National Commission considers asylum seekers and refugees to be highly vulnerable groups. However, the Commission does not have direct access to all migrants and does not directly monitor their rights protection.

226 Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings Recommendation CP(2016)2 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria, adopted at the 18th meeting of the Committee of the Parties on 23 May 2016

227 Social Fieldwork Research (FRANET)/Bulgarian Helsinki Committee, *Severe Forms Of Labour Exploitation. Supporting Victims Of Severe Forms Of Labour Exploitation In Having Access To Justice In EU Member States*, Bulgaria, 2014.

228 Ibid. http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_bg.pdf

229 *Monitoring Report on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria in 2014*, Multi Kulti Collective, online: http://multikulti.bg/wp-content/uploads/2013/06/Monitoring_Integration_Refugees_2013_EN.pdf; *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, Human Rights Watch. April 30, 2014, available online at: http://www.hrw.org/reports/2014/04/30/containment-plan-0 .

230 *Bridging the Gap Between Migration Asylum and Anti-Trafficking*, ICMPD 2018

231 Ibid

232 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

A report by the International Centre for Migration Policy Development in 2018 states that people in an irregular work situation in Bulgaria have limited avenues to seek redress for any exploitation occurring at the workplace; they would also be reluctant to turn to the authorities if they are victims of any crime or abuse, including trafficking, for fear of being arrested, detained and/or deported.[233]

1.8 Other vulnerable groups

It is not just foreign migrant workers who are vulnerable to exploitation and abuse in employment. In a country with high levels of poverty, poor living standards and unemployment, Bulgarian national workers are also vulnerable. Those most vulnerable to trafficking are found to be those living in poverty, as well as educated people in small towns with limited work possibilities or high unemployment and little economic opportunity, including people from the Roma community and youths who have grown up in institutional settings such as orphanages.

Estimates show that Roma people make up around 10.3 per cent, or 750,000 members of the Bulgarian population.[234] Official figures are lower due to people migrating and moving within the country, often not being officially registered. Unemployment among the Roma people is estimated to be up to 70 – 90 per cent, compared to the national average of 8 – 10 per cent. There are though large differences amongst Roma groups in relation to their integration in society and access to employment.

Alongside Roma communities, there are certain other diaspora minority groups in Bulgaria, e.g. large Turkish and Chinese communities, who mostly arrived after the political changes in 1989. Often, these are closed and isolated communities. A large majority of the Chinese community migrated to Bulgaria to set up small businesses. Most of them live in the capital Sofia and work in Chinese restaurants, although they are also known to work as shopkeepers, engaging in both retail and wholesale trade. Chinese migrant workers – although residing for many years in the country – are regarded as vulnerable to exploitation, especially in the restaurant sector. However, there seems to be no data available on the vulnerability or exploitation of Chinese workers in Bulgaria. A representative of Bulgarian law enforcement referred to a labour exploitation case relating to Chinese workers working on road construction, but no further information on this case could be found.

1.9 Vulnerable sectors and workers

In 2013, the General Labour Inspectorate Executive Agency identified the following sectors as at high risk of labour exploitation in Bulgaria: construction, agriculture, construction of vehicles (excluding automobiles), oil and gas extraction, and overland transport. The EU Fundamental Rights Agency research from 2014 referred similarly to construction and agriculture. In addition the EU research reported the following vulnerable workers:[235]

233 *Bridging the Gap Between Migration Asylum and Anti-Trafficking*, ICMPD 2018

234 *Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions*. Brussels: European Commission. April 2011. p. 15

235 Social Fieldwork Research (FRANET) - *Supporting Victims Of Severe Forms Of Labour Exploitation In Having Access To Justice In EU Member States*, Bulgaria, 2014 - page 23

- unskilled workers;
- textile factory workers, those working in manufacturing and clothing apparel;
- car washers;
- restaurant and kitchens workers including maids in hotels;
- farm workers and those working in agriculture and forestry, mainly pickers or growers of fruit and vegetables;
- people working in finishing or animal production.

Trade union Podkrepa reports that labour exploitation is mostly found in situations of temporary or seasonal contract work, agency work, as well as other forms of outsourced work, "which gives employers multiple legal buffers against responsibility for the employment relationship and engaging in collective bargaining."[236] According to the NGO Animus Association, next to non-regulated sectors such as domestic work and the sex industry, vulnerable sectors include agriculture and horticulture, construction, tourism and the entertainment sector (hotels, bars, nightclubs), the textile industry and the meat, fishing and chicken industry.[237]

A number of labour-related offences identified by the labour inspectorate in 2017 were found in enterprises active in the following economic sectors:

- retail;
- restaurants;
- plant-growing, livestock and hunting;
- land transport;
- wholesale;
- security and investigation activities;
- construction.

Despite its prevention and monitoring role, the Bulgarian Employment Agency reported in 2017 "not to have yet detected any cases of human trafficking for labour exploitation." They did see cases where companies did not follow labour contracts. In such cases, the agency informed European Employment Services (EURES) representatives in foreign countries to further check and follow up the case.[238] A Manpower representative also stated they had not come across any cases of severe exploitation over the last few years.[239] However, the National Commission for Combatting Trafficking in Human Beings, the Labour Inspectorate, investigators and the Prosecutor's Office of the Republic of Bulgaria have identified cases of trafficking for labour exploitation in Bulgaria, and reported an increase in cases in 2017. See chapter 3 for more.

Research conducted on vulnerable labour sectors in Bulgaria mainly deals with exploitation in the garment sector. Research reports have been published by the organisations Clean Clothes Campaign[240] and Fair Wear Foundation[241] over the last few years. According to Clean Clothes Campaign, "around 100,000 people work in the garment industry in registered employment, and an estimated 50,000 workers under semi-formal or informal conditions with no labour contracts or with contracts that do not reflect the real employment in terms

236 Interview representative KT Podkrepa – fact finding mission March 2017.
237 Interview Animus Association – fact finding mission March 2017
238 There are conditions for obtaining social (unemployment) benefits; including regular meetings with the agency and proof for applying for jobs. In case workers are not fulfilling these conditions, the registration and thus the support can be cancelled.
239 Interview representative Manpower Bulgaria – fact finding mission, March 2017
240 https://cleanclothes.org/about/who-we-are
241 https://www.fairwear.org/about/approach/

of work hours or wages."[242] The organisation reported that workers often work without social insurance protection and without any employment security. Researchers identified factory workers who had to work six or seven days in a row for 12 hours a day or more.[243]

A study by the organisation Fair Wear Foundation confirms these findings; through interviews with local experts and trade unions, researchers revealed problems with legal compliance, including non-payment of back wages. They noted that workers had no fixed working hours and were forced to work excessive overtime without correct remuneration. Double bookkeeping was discovered in order to evade taxes, including social security costs.[244] Another recent report from Clean Clothes, based on interviews with workers and desk research conducted between March and June 2018 within their "Turn Around, H&M!" campaign, reported that Bulgarian workers in the garment sector have to work many hours without rest in order to earn the minimum wage, which also harms their health. "Poor wages, excessive overtime and the additional burden of household work result in malnutrition, fatigue and workplace fainting."[245]

Trade unions Podkrepa and KNSB also refer to the tourism sector as another vulnerable sector. For this sector many foreign workers are currently recruited, in particular from Asia, mainly India. The unions have noted that migrant workers in this sector often have no contracts, yet work 12-14 hours a day, without any days off. Moreover these workers have limited opportunity to file complaints. "Sometimes they do not receive their last pay check but do not go to court either, as it is often costly."[246]

1.10 Safe reporting and complaint mechanisms

In general it is difficult for workers to complain about bad working conditions due to the risks this entails. Stakeholders interviewed for this report mentioned that even Bulgarians are generally afraid to complain about labour conditions in any sector, afraid of losing their jobs.[247] Workers in exploitative situations, especially undocumented migrants, strongly hesitate or decide not to complain, as they face many barriers to accessing protection and redressing abuses. Moreover, due to workers' irregular status, authorities frequently deny their rights to protection and enforce – or threaten to enforce – punitive measures instead.[248] Those who do report exploitation in the workplace risk arrest, detention and deportation, especially as the Bulgarian Labour Inspectorate has a duty to report any identified (third country national) worker without a required legal work permit to the migration authorities.

That means there is no clear *firewall* in place; "a clear separation between immigration enforcement activities and the provision of essential services for exploited workers." A *firewall* allows vulnerable workers to safely file a complaint and access justice; it empowers workers, tackles abuses and promotes fair business practices.[249]

242 https://cleanclothes.org/livingwage/europe/country-profiles/bulgaria
243 https://cleanclothes.org/livingwage/europe/country-profiles/bulgaria
244 Fair Wear Foundation country study Bulgaria 2016 – see https://www.fairwear.org/wp-content/uploads/2017/01/CS-Bulgaria-2016.pdf
245 Clean Clothes Campaign, *H&M: Fair Living Wages Were Promised, Poverty Wages Are The Reality* - 2018
246 Media interview with Vania Grigorova, adviser to the president of the Podkrepa trade union and Atanaska Todorova, chief expert in the KNSB trade union https://www.euractiv.com/section/economy-jobs/opinion/more-social-dumping-comes-to-europe-through-bulgarias-door/
247 *Rights at Work* kick off meeting minutes – Amsterdam, December 2016
248 https://picum.org/focus-area/justice/
249 https://picum.org/firewall-3/

In Bulgaria, as in most European countries, there are in practice no safe reporting or complaint mechanisms in place, regardless of European legal provisions that require or indicate the need for such effective complaints mechanisms to be established for reporting labour rights violations.[250]

250 At European level these include: the Employers' Sanctions Directive (2009/52/EC); the Anti-Trafficking Directive (2011/36/EU) and the Victims of Crime Directive (2012/29/EU). See PICUM Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse: http://picum.org/wp-content/uploads/2017/11/WorkerComplaintMechanismLeaflet_EN.pdf

2 Legal framework and other initiatives

This chapter looks at the national legislation related to human trafficking, forced labour and other forms of labour exploitation in Bulgaria. It gives a brief review of other relevant legislation, as well as non-legally binding corporate social responsibility and business and human rights initiatives.

2.1 Human trafficking and forced labour

Bulgaria complies with the main international legislation to criminalise human trafficking. Bulgaria is party to the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol). Further, it is party to the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197). As an EU member, Bulgaria is also bound by EU legislation in the field of combatting trafficking in human beings, including Directive 2011/36/EU of the European Parliament, and of the Council of 5 April 2011 on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims.

The main national legislative acts that cover trafficking in human beings are the Penal Code (article 159a and 159r) and the Combatting Trafficking in Human Beings Act. A number of other pieces of legislation are also relevant, particularly to the rights of trafficked people. These include: the Child Protection Act; Health Insurance Act; Social Assistance Act; the Labour Code; the Legal Aid Act; Protection against Domestic Violence Act; Crime Victim Assistance and Financial Compensation Act; the Asylum and Refugees Act; and Foreigners in the Republic of Bulgaria Act.[251]

Bulgaria's legal definition of human trafficking is in line with the Palermo Protocol definition, which has been transposed into the Bulgarian Criminal Code and the Law on Combatting Trafficking in Human Beings. Differently than in most other European legislation on human trafficking, the element 'means' (use of force or deceit) does not have to be proven to qualify actions as human trafficking, it is only an aggravating factor, and therefore the definition seems to follow a broader approach than that of the UN Protocol.[252] The Criminal Code classifies trafficking in human beings as a "crime against a person" and lays out elements of the crime in Article 159a.[253]

251 See also National Referral Mechanism, in which these acts are described. https://antitraffic.government.bg/wp-content/uploads/NRM_Bulgaria_EN.pdf

252 FRA report 2014 states: A peculiarity of the legal definition of human trafficking under Bulgarian criminal law and national penal judicial practice is that it is broader than the international law definition of human trafficking in the Palermo Protocol and the practice of the European Court of Human Rights under Article 4 of the European Convention on Human Rights (ECHR). The Bulgarian definition excludes the 'means' element. According to Article 159a, Paragraph 2, point 2 of the Criminal Code, coercion and deception are only aggravating circumstances, but not a constitutive element in order for the action to qualify as human trafficking. This interpretation of irrelevance of consent by the victim is viewed as beneficial by the interviewees in the study, because coercion or deception do not need to be proven in the criminal process and the number of prosecutions and convictions increase easily. Furthermore, the Bulgarian Supreme Court of Cassation has adopted an Interpretative Decision acknowledging that the scope of criminalisation of human trafficking under Bulgarian law is wider than the one under international law, and referring to the principle of state sovereignty in this regard.

253 Criminal Code, Art. 159a (adopted – State Gazette No. 92 from 2002, last amended – State Gazette No. 94 from 2013)

Aggravating circumstances listed in this article include: the victim being a minor, using force or deception, abuse of power, and a victim in a state of dependency.

In Bulgaria, *slavery*, *servitude* or *forced labour* are only criminalised in the context of human trafficking.[254] These actions thus only constitute crimes when they are combined with actions of recruitment, transportation, transfer, harbouring or receipt.[255] Forced begging and removal of tissues, bodily fluids or cells have been included among the forms of exploitation in the criminal code article on human trafficking.[256] As in most other European countries, there are no standalone criminal offences for forced labour or labour exploitation. Moreover, labour exploitation is not further defined in the anti-trafficking act or in the penal code, the definition uses the term 'forced labour'. To prove forced labour, the use of physical violence should be proven.

Therefore, regardless of the broader Bulgarian definition, it remains difficult to get severe cases of labour exploitation investigated when human trafficking cannot be proven, according to the NGO Animus Association. "In case there is no proof of force, or physical threat or violence and the worker consented to the work to be conducted – *even though consent is considered irrelevant in the UN Palermo Protocol* – Bulgarian prosecutors seem to hesitate to investigate cases of labour exploitation as human trafficking, even if there are clear indicators of severe exploitation. Cases are then dropped and dealt with mainly as labour violation cases, which is not a crime defined in the Bulgarian penal code." [257]

According to the stakeholders involved, the current definition and interpretation of the crime of human trafficking makes it easier to get cases of trafficking for sexual exploitation prosecuted than cases relating to labour exploitation in other economic sectors. This reluctance to prosecute trafficking for labour exploitation seems also to relate to a judgement of the Bulgarian Supreme Court, which states that, "trafficking for labour exploitation can only be defined if there is a situation of forced labour." Some stakeholders have therefore indicated the need for a broader interpretation and a revision of the Bulgarian legislation to create stand-alone offences for forced labour or labour exploitation.

Next to international anti-trafficking legislation, Bulgaria has ratified most ILO conventions,[258] including the eight fundamental conventions such as the Forced Labour Convention of 1930. Bulgaria has, however, not yet ratified the additional Forced Labour Protocol of 2014[259] (P029 – Protocol of 2014 to the Forced Labour Convention, 1930).[260] This Protocol updated the 1930 Forced Labour treaty. It requires "state parties to educate employers and vulnerable individuals about forced labour, and to enforce legislation that

254 Social Fieldwork Research (FRANET), *Severe Forms Of Labour Exploitation: Supporting Victims Of Severe Forms Of Labour Exploitation In Having Access To Justice In EU Member States*. Bulgaria, 2014. http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_bg.pdf p. 8

255 Ibid, p. 9

256 Group of experts on action against trafficking in human beings (GRETA), *Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings* by Bulgaria, 28 January 2016, https://rm.coe.int/1680630d6c (31 January 2018).

257 Interview Animus Association – fact finding mission March 2017

258 Bulgaria has ratified 101 ILO Conventions and one Protocol, of which 63 are in force, see ILO website, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102576

259 Government, employer and worker members of the International Labour Conference (ILC) Committee on Forced Labour noted in their report to the 103rd Session of the ILC that there were gaps in the implementation of both the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), and emphasised the need for a legally-binding instrument aimed at eliminating forced labour.

260 Website International Labour Organization, P029 – Protocol of 2014 to the Forced Labour Convention 1930, 11 June 2014 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:P029:NO (Accessed 1 February 2018)

applies to all workers and sectors of the economy." It further requires "strengthening of labour inspection services and protection of individuals, including migrant workers, from possible abuse and fraud during recruitment and job placement. Governments are requested to support efforts by the public and private sectors to prevent and respond to complaints of forced labour, and to address the underlying causes of forced labour. Victims of forced labour should be identified and have access to remedies, including compensation, regardless of their legal status in the state." The Protocol further requires states to develop national policies and plans of action against forced labour in "consultation with employers' and workers' organisations, and to cooperate with other states to eliminate forced labour practices."[261]

Bulgaria has not ratified[262] the Istanbul Convention; the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence.[263] Under this Convention, states are required to prevent gender-based and domestic violence, protect victims and prosecute the perpetrators. In 2005, Bulgaria adopted the Protection against Domestic Violence Act. In 2019, the Bulgarian Criminal Procedure Code was amended in order to criminalise systemic domestic violence. However, the country still lacks sustainable policies and a holistic approach for preventing domestic violence and changing stereotypical attitudes towards women. This also impacts on victims of human trafficking, as in Bulgaria many of them are also victims of domestic violence.

Although Bulgaria did commit to the Global Compact on Refugees in December 2018, it did not endorse the Global Compact for Safe, Orderly and Regular Migration, similar to the US and some other European countries.[264] The Compact aims to create a global framework for managing migration: a "non-legally binding, cooperative framework", to encourage "international cooperation among all relevant actors on migration, acknowledging that no state can address migration alone, and upholds the sovereignty of states and their obligations under international law."

2.2 Labour Code

The Bulgarian Labour Code regulates all employment relationships in Bulgaria. It applies to all employment contracts concluded between Bulgarian employers and employees, and between Bulgarian citizens and foreign legal entities in Bulgaria. The Bulgarian labour law describes general working conditions (Chapter I, XVIII, XIX), and also conditions related to individual employment contracts (Chapter V – XVII), as well as collective labour relations (Chapter III, IV and VI). It provides regulations on employment and work contracts, on wage and remuneration, on social security, overtime, rest and vacation and the working place. Next to these more detailed provisions the Bulgarian Labour Law outlines some general principles, which include labour freedom and protection, social dialogue, equal rights for men and women and general non-discrimination laws.

261 Protocol of 2014 to the Forced Labour Convention, 1930 (Entry into force: 09 Nov 2016). Adoption: Geneva, 103rd ILC session (11 Jun 2014)

262 The Bulgarian Constitutional Court voted on 27 July 2018 to declare the Istanbul Convention unconstitutional. Opponents claim that the convention has a hidden agenda of shaping gender perceptions and ideologies and promoting a 'third sex' and 'same sex marriage'.

263 This convention is the first instrument in Europe to create a comprehensive framework for the protection of women and girls from all forms of violence. See full text at https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e

264 For more information on the global compact on migration, see https://www.iom.int/global-compact-migration

In addition, there are various legislative and sub-legislative acts to protect employees in Bulgaria, for example against unlawful dismissal and entitlement to certain benefits.[265]

2.3 Other relevant measures and initiatives

Even though there are international standards developed by the UN, the OECD and the ILO that provide opportunities for governments and businesses to undertake action to tackle labour exploitation and human trafficking, often such action is voluntary.

Corporate social responsibility

Corporate social responsibility is getting more attention in Bulgaria. Although initially initiatives were mainly coming from foreign (private) actors, domestic stakeholders have increasingly been pushing and setting the CSR agenda. Bulgaria's government has launched a National Strategy for CSR, however business actors are regarded as the main drivers of CSR. Nevertheless, most "Bulgarian companies still lack systematic knowledge and know-how about the subject."[266] Manpower (ManpowerGroup) has been one of the active business players in Bulgaria promoting CSR policies for tackling labour exploitation. They joined the UN Global Compact, and were the first to sign the Athens Ethical Principles in 2006[267] with a "zero tolerance" policy for human trafficking. It is Manpower's policy not to work with any entity, including clients, vendors and business partners, that benefits in any way from human trafficking or forced labour of any kind.[268] Manpower, along with other recruitment and employment agencies, have been closely cooperating with the Bulgarian National Commission for Combatting Trafficking in Human Beings, as well as with NGOs and other stakeholders to engage the private sector more in preventing human trafficking and other forms of labour exploitation. *See Global Compact Bulgaria (below) for more.*

Although social responsibility initiatives to which businesses do commit are in general voluntary and non-legally binding, such initiatives can help to prevent severe forms of labour exploitation, for example by companies undertaking human rights risks (due diligence) assessments that include identifying risks associated with human trafficking wherever business is carried out. Furthermore, businesses can create and implement adequate human rights (procurement) policies for the company and its suppliers, and raise awareness about the risks of using trafficked labour. They can train staff, suppliers and contractors to better understand and implement company policies. Also, cooperation of businesses with other stakeholders (including local government authorities, NGOs and local communities) is important in identifying risks associated with forced labour and human trafficking as well as to help workers, for example by establishing complaint mechanisms and access to remedies.

265 In addition to the Labour Code (Bulg: Кодекс на труда) from 1986 numerous detailed primary and secondary rules and regulations are applicable; (Regulation for minors below the age of 15 (1986) Bulg: Наредба за работата на лицата, ненашършили 15-годишна възраст; Regulation No. 4 of 1993 on the necessary documents which must accompany an employment contract Наредба №4 за документите, които са необходими за сключване на трудов договор; Regulation No. 5 on the procedure for the registration of employment under Article 62, para.4 of the Labour Code Наредба №5 за съдържанието и реда за изпращане на уведомление по чл. 62, ал. 4 от Кодекса на труда etc.)

266 *Corporate Social Responsibility in Europe*. United in Sustainable Diversity, 2015

267 https://www.unglobalcompact.org/library/70 - nine companies in Bulgaria have signed the Athens principles

268 https://www.manpowergroup.com/sustainability/our-foundation/libraries/human-rights-fair-labor

National Action Plan on business and human rights

Bulgaria does not have a national framework or action plan to address the issue of business and human rights,[269] although Bulgaria's government endorsed the UN Guiding Principles for Business and Human Rights in 2011.[270] During La Strada International's field visit in 2017, stakeholders reported that there was no active debate in Bulgaria on developing such a business and human rights action plan. In general though, the need to engage the private sector and make them more accountable is acknowledged, and there are regular discussions and initiatives taken by the National Commission and other stakeholders to involve the private sector more in the prevention of human trafficking.[271] The National Commission developed active partnerships with employers and business leaders and some crisis centres and shelters for trafficked people, as well as maintaining partnerships with local businesses who support their services and employ victims.

Global Compact Bulgaria

In 2003, the Global Compact Network Bulgaria was launched. The United Nations Global Compact[272] supports companies to "conduct business responsibly by aligning their strategies and operations with *Ten Principles on Human Rights, Labour, Environment and Anti-corruption*; and take strategic actions to advance broader societal goals", such as the adopted UN Sustainable Development Goals. The Compact is a voluntary initiative, "seeking wide participation from a diverse group of businesses and other organisations to commit to the implementation, disclosure and promotion of the Compact's ten universal principles."[273] The Bulgaria Global Compact Network currently comprises 47 partners.[274]

OECD Responsible Business Conduct

Bulgaria is not a member of the OECD, but in 2018 the Minister of the Bulgarian Presidency of the Council of EU, Lilyana Pavlova, stated that Bulgaria is ready to join OECD, and to "expect its roadmap for preparation and opening of membership negotiations."[275] Bulgaria applied for membership of the OECD in 2007.

The country does not yet have a National Contact Point for implementation of the recommendations made by the OECD.[276] Governments adhering to the Guidelines are "required to set up a National Contact Point, whose main role is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that may arise from the alleged non-observance of the Guidelines in specific instances."

269 Business & Human Rights Resource Centre, National Action Plans, http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans
270 https://www.fairwear.org/wp-content/uploads/2017/01/CS-Bulgaria-2016.pdf
271 Interview National Commission – fact finding mission March 2017
272 https://www.unglobalcompact.org/what-is-gc
273 http://www.globalcompactromania.ro/how-to-join/faqs/?lang=en
274 https://www.unglobalcompact.org/engage-locally/europe/bulgaria
275 http://bnr.bg/en/post/100962820/minister-pavlova-bulgaria-is-ready-to-join-oecd
276 http://dpiis.gov.ro/new_dpiis/foreign-investments/pnc-national-contact-point/

3 Labour exploitation in Bulgaria

This chapter looks at the indicators and statistics related to human trafficking, forced labour and labour exploitation existing in the country. It also provides information on some concrete cases identified in Bulgaria.

3.1 Identification and registration of human trafficking

Bulgaria is still mainly seen by its institutions and stakeholders as a country of origin for victims, who are trafficked abroad mainly to other EU countries. The main countries to which Bulgarian victims have been trafficked in the years 2011 to 2017 include Germany, Greece, the Netherlands, Austria, France, Cyprus, Poland, Italy and the Czech Republic.[277] [278] According to Eurostat, it is also one of the five EU member states (along with Romania, Poland, Hungary and the Netherlands) where the highest number of identified victims of human trafficking in Europe originate from.[279]

Partly as a result of low awareness among stakeholders around domestic labour exploitation – and the presumption that Bulgaria is mainly a country of origin – the number of cases of severe exploitation identified and reported within in the country is low in comparison to identified cases of Bulgarians exploited abroad. As the EU's Fundamental Rights Agency pointed out in 2016:[280] "It should be noted that – after the explicit introduction to the topic and the definitions made at the beginning of the interviews – most of the *government* interviewees still assumed that the questions about severe forms of labour exploitation of migrants encountered by their institution referred to Bulgarian nationals working abroad. Hardly any of them had experience with migrant workers in Bulgaria."[281]

The ignorance of the existence of severe exploitation of (foreign) workers within the country was also often noticed by the Rights at Work consortium during the implementation of this project. As Bulgaria is traditionally a country of origin for Bulgarian nationals migrating and being exploited abroad, institutions and experts seem not yet sufficiently prepared to focus and work more on the vulnerability and exploitation of foreign workers for whom Bulgaria is a country of transit or destination. It is expected that it will take time to get stakeholders to adapt to the new context, and to increase recognition for domestic labour exploitation. [282]

The Bulgarian National Commission for Combatting Trafficking in Human Beings refers to the data provided by the Bulgarian Prosecutor's Office for 2017. According to this, 505 people were identified and registered as trafficked, including 442 females and 63 males.[283]

277 Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA and Committee of the Parties), *Report Concerning The Implementation Of The Council Of Europe Convention On Action Against Trafficking In Human Beings By Bulgaria*, GRETA (2015) 32, 28 January 2016, online: https://rm.coe.int/1680630d6c [the "GRETA Report"], p.7.

278 https://antitraffic.government.bg/uploads/Reports/EN/2017/2017.pdf

279 Eurostat report *Trafficking in Human Beings* – edition 2015

280 Social Fieldwork Research (FRANET), *Supporting Victims Of Severe Forms Of Labour Exploitation In Having Access To Justice In EU Member States*. Bulgaria, 2014 http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_bg.pdf p. 46

281 *fra.europa.eu/sites/.../severe-labour-exploitation-country_bg.pdf*

282 Interview representative of Animus Association Foundation, January 2019

283 Please note that the data provided by the Supreme Prosecutor's Office of Cassation is aggravated and refers to all ongoing cases for the year, i.e. it includes both cases that were opened the previous year and are still pending (no indictment is brought in court, or no verdict is ruled), and new cases

Three hundred and twenty three people were trafficked for sexual exploitation; 67 for labour exploitation.[284] Only a small number of these cases were identified and occurred within Bulgaria. Statistics provided for the year 2018 by the Bulgarian Prosecution Office revealed 59 cases of trafficking for labour exploitation, including 15 relating to exploitation within Bulgaria. According to the National Commission, sexual exploitation remains the main form of trafficking. At the same time, in 2017 there was an increase in the number of identified victims of trafficking for labour exploitation.

Identified victims of trafficking in human beings (including labour exploitation) in Bulgaria

	2012	2013	2014	2015	2016	2017*
Total number of victims	**684**	**538**	**495**	**409**	**446**	**505**
Sexual exploitation	461	428	409	314	329	323
Labour exploitation	131	44	16	26	31	67
Organ trafficking	–	–	1	1	1	1
Minors	21	20	30	6	3	6
Adolescents (14-18 years)	44	43	23	27	14	36
Trafficking of pregnant women for the purpose of baby selling	38	–	17	17	80	97

Source: Bulgarian National Commission on Trafficking in Human Beings, annual report 2017

Regardless of the legal recognition for all forms of human trafficking, figures show that the majority of victims identified and supported in Bulgaria have been exploited in the sex industry, often abroad. There are far fewer registered cases of trafficking for exploitation in other labour sectors, and only a few of these occurred within Bulgaria. The NGO Animus Association, the National Commission and other mainly international actors have reported a lack of identification and referral of cases of trafficking for labour exploitation in the country. They receive signals that severe forms of labour exploitation are occurring in the country, and feel that with more attention more cases will be found. The National Commission recognises the difficulties of identifying or proving trafficking for labour exploitation, and the fact that exploitation cases are often identified as violations of the labour law only and not criminal law.

The National Commission for Combatting Trafficking in Human Beings reported – on the basis of information collected according its mandate – indications that trafficking for the purpose of labour exploitation is increasing in the country, particularly among men being recruited for work in the construction and agricultural sectors.[285] In 2016, the Council of Europe monitoring body GRETA made reference to a rising trend in internal trafficking, and an increase in the number of cases where Bulgaria was a country of transit or destination for victims, but reported that no official data was available to prove this trend, or to identify the number of foreign nationals who are victims of human trafficking.[286]

284 The US Trafficking in Persons report of 2018 states 'based on open pre-trial investigations in 2017, the prosecution service identified 407 victims (323 of sex trafficking, 67 of labour trafficking, and 17 of forced servitude), compared with 365 victims (329 victims of sex trafficking, 31 of labour trafficking, and five of both sex and labour trafficking) in 2016.

285 Interview National Commission, fact finding mission, March 2017

286 *Report Concerning The Implementation Of The Council Of Europe Convention On Action Against Trafficking In Human Beings* by Bulgaria Second Evaluation Round Adopted on 20 November 2015 Published on 28 January 2016

As for trafficking of migrants to Bulgaria, according to the 2017 annual report of the National Commission for Combatting Trafficking in Human Beings, "single cases of unidentified third country national victims from Africa (Burkina Faso, Sierra Leone) and the Middle East (Afghanistan, Iraq, Iran, Syria) were reported in 2017.[287] Further it is reported that, "in the last few years there has also been work with victims from Romania and citizens with an 'unidentified identity' (from the so-called former Soviet Republics)."[288] The US TIP report of 2018 states that Bulgarian authorities in 2017 detected five potential foreign victims from Burkina Faso, Nigeria, Guinea, Sierra Leone and Thailand, compared with one foreign victim in 2016. These cases could not all be confirmed by the National Commission. The US Department of State, which publishes the TIP report, also stated that, "observers alleged law enforcement could not effectively identify victims, particularly labour trafficking victims and victims among third country nationals."[289]

Case 1 Of identified presumed trafficked third country national in Bulgaria

A female African national was detected as a victim of trafficking by a legal NGO she approached seeking support to legalise her stay in Bulgaria. Her case was referred to the National Commission for Combatting Trafficking in Human Beings, and then later to the NGO the Animus Association, where the woman was given accommodation.

The woman had a history of abuse, and had been forced to marry in her home country, where she became a victim of domestic violence and sexual abuse for a period of seven years. She escaped that situation with the support of a friend, who later was the one telling her that a foreign diplomatic family was looking for a domestic worker to take care of their children.

She took up this employment. In the beginning the working conditions were acceptable, but the family started demanding an increasing amount of work from her. Especially after she had moved with the family to another African country, she started having to work long hours taking care of three children and the entire household. When the family was then requested to move to Sofia, Bulgaria, as part of the diplomatic service, she was asked to join after being promised that working conditions would improve. However, here the exploitation continued, with up to 18 working hours a day, while she was forced to be available 24 hours a day and to look after the smallest child seven days a week.

287 Cases can be initially identified as potential trafficking cases, but at a later stage not be formally identified as such by the authorities, e.g. cases can be dismissed by the pre-trial authorities and, in particular, by the Prosecutor's Office (National Commission, March 2019)

288 https://antitraffic.government.bg/uploads/Reports/EN/2017/2017.pdf

289 US TIP report 2018

When she fell ill due to the bad working conditions, the family refused to provide her with medical help. The family promised to arrange work and permanent residency documents for her in Bulgaria as embassy staff, and forced her to sign papers and contracts in Bulgarian that she could not understand. She finally escaped from the embassy when she realised the family was planning to go back to their home country and take her along. She managed to leave the family and tried to escape Bulgaria for another European country, but was captured at the border checkpoint and returned to the country. Through the Bulgarian authorities and other organisations she came in contact with the legal NGO who supported her to apply for residence permit on humanitarian grounds, and she was placed in a reception centre.

The National Commission, IOM and the State Agency for Refugees were involved. After an incident of abuse towards her, she was referred to the Animus Transit Centre (a specialised service for trafficked people), where she received psychological and social support and a comprehensive assessment to identify relevant trafficking indicators. Criminal proceedings on her case were launched. Her legal stay was extended due to an increased risk of re-trafficking or other abuse.

3.2 Reports by other stakeholders

Despite the low figures of trafficking for labour exploitation identified within the country, stakeholders acknowledge that there are clear signs of labour exploitation occurring. The border police in Bulgaria stated: "There are many signals of labour exploitation in Bulgaria, but often these cases are seen as fraud of economic crime, or violation of the labour code, while cases are not identified as trafficking for labour exploitation."[290]

As for the exploitation of migrants within Bulgaria, it is acknowledged that migrants find themselves in a vulnerable situation, but so far, no cases of trafficking that involved possible exploitation of migrants or refugees have been identified by the border police. "The reason that we have not identified cases, is that refugees use the country as a transit country, and leave Bulgaria again as soon as possible." The border police stated they expect that in the future such cases might be identified by them and occur more frequently.[291] Meanwhile, there have been cases reported by stakeholders where trafficking for labour exploitation could not be proven, for example a case where Chinese workers were exploited when building highways in Bulgaria.[292]

Representatives of the Human Trafficking Unit of the law enforcement stated that many cases involving labour exploitation are related to a lack of (adequate and valid) work contracts. Law enforcement representatives linked with this Unit did identify a case of Bulgarian nationals severely exploited at a cow farm in the Sofia region. The police identified the victims and gave them shelter for a number of days and started the investigation. They referred the case to the prosecution office, which found sufficient evidence and referred the case to court. [293]

290 Fact finding mission to Bulgaria, March 2017
291 Interview border police, fact finding mission, March 2017
292 Interviews fact finding mission March 2017
293 Interview Human Trafficking Unit, law enforcement, fact finding mission March 2017

Case 2 Exploitation of Bulgarian nationals

In early 2017, two owners of a cow farm in the Sofia region were found to have exploited an unknown number of workers, two of whom were identified as Bulgarian nationals of Roma origin. The workers were recruited and lured into the job under false pretences by someone they knew. The farm owners confiscated the workers' ID cards, forcing them to live and work on the farm under very bad conditions. They had to sleep in the shed, received very little food, and no payment. The authorities were alerted to the situation, leading to a police raid. The police identified the two victims and referred them to social services. The two workers had been at the farm for at least three months. They stated that there had been more workers, but they had managed to escape. The two identified victims were illiterate and in weak social situations, but had families that they could return to.

The 2014 FRA report on severe forms of labour exploitation in Bulgaria referred to two cases of severe exploitation of foreign nationals in Bulgaria, revealed by one respondent in their research. One concerned "a worker in a restaurant who was kept locked away in the basement; another was about a person working for a trading firm who was kept in the back room to put goods in order, and was not allowed to go out for a couple of months. Both were asylum seekers: one Iraqi, the other Palestinian."[294] These cases were not confirmed by the National Commission.

3.3 Reported labour law violations

As for indications of labour exploitation, in total 45,645 checks were conducted in 2017 by the General Labour Inspectorate Executive Agency, followed by 12,902 secondary/follow-up checks.[295] [296] As a result of these inspections, a total of 195,783 violations of compliance with the requirements and norms of the labour legislation, the Labour Migration and Labour Mobility Act, and the Civil Servants Act were detected.[297] The majority of these violations were reported to relate to health and safety at work. According to the Labour Inspectorate, this might be the result of more priority focus on these issues; in 2017 many construction sites were inspected with a specific focus on ensuring health and safety at work. The next most-reported issues were of 'labour exploitation'. These related in particular to:

- lack of labour contract;
- lack of transparent labour relations;
- undeclared work;

294 Social Fieldwork Research (FRANET) *Supporting Victims Of Severe Forms Of Labour Exploitation In Having Access To Justice In EU Member States* Bulgaria, 2014

295 1,146 checks were jointly organised with other state and monitoring institutions; 189 with trade unions. In total 37,284 business organisations were checked, including 4,440 first inspections. In 2017 the GLIEA conducted 733 foreign enterprises checks (companies with foreign owners or with foreign participation), 117 of which were owned by Greek citizens, 71 were owned by Turkish citizens, 75 were owned by Italian citizens and 232 were owned by other owners

296 152 inspections were conducted of labour recruitment firms identifying 464 violations, as well as 175 inspections of temporary employment agencies that resulted in identification of 731 violations. Moreover the GLIEA conducted 530 inspections of employers sending posted workers to EU countries and identified 2,781 violations related to this – source: US TIP *Report On Trafficking In Human Beings*, edition 2018

297 The distribution of offences by major groups is as follows: 97,615 violations of the normative requirements for health and safety at work; 96,426 violations of labour standards; 1,650 violations of the provisions on employment promotion; 1,650 violations of labour migration and labour mobility; 92 violations of the provisions of the Law on State Employees

- poor working conditions;
- low wages;
- other issues.

A tendency has been noted by the Labour Inspectorate for employers not to pay the last wages and benefits of employees upon termination of the employment relationship.[298] The most common violations related to payments were:

- non-charging and non-payment of additional remuneration for work experience and professional experience;
- non-payment by an increase in overnight and overtime work;
- non-payment of additional remuneration for work on public holidays.

Violations often related to self-employment, subcontracting or a relation of undeclared work. The Labour Inspectorate noted that many violations also related to employment of foreigners and irregular migrants, as well as posted workers. "In cases of no transparent labour relations; in particular when there are mediators who recruit and send workers abroad, we see that workers have no access to information about the company they will work for, and options to control information remain limited." [299]

Most complaints the Labour Inspectorate received from workers were related to working hours or non-received wages. The Inspectorate apparently rarely receives complaints from workers about bad working conditions, which "seem rather accepted by workers."[300] "Mostly workers file complaints after their contract has finished, and they have not been paid correctly." In cases where workers are no longer formally employed, the Labour Inspectorate can do less for them and mainly recommends that former employees start court procedures.[301] "Difficulties to support workers also arise when workers are not directly employed, but are signed up through employment or recruitment agencies or subcontractors. These arrangements obscure the legal situation, and make it more difficult to identify the actual owner. Moreover, for victims of severe exploitation, it becomes more difficult to understand their rights and how to enforce them."

298 Source: *2017 Annual Report of GLIEA* (Labour Inspectorate) (only in Bulgarian)
299 Interview with Labour Inspectorate, fact finding mission Bulgaria, March 2017
300 Idem
301 Idem

4 Coordination and role of different stakeholders

This chapter describes the role of different stakeholders in addressing severe forms of labour exploitation, including human trafficking and forced labour. There are various stakeholders active in Bulgaria who address the issue of trafficking in human beings.

4.1 National Referral Mechanism

A co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons is called a National Referral Mechanism, which co-ordinates state efforts in a strategic partnership with civil society at the national level.[302] The National Referral Mechanism's main objectives are to ensure full respect for the human rights of trafficking victims, to set out basic operational principles, and to lay down standard operating procedures in the identification, referral, protection, support and social inclusion of all victims of the crime of human trafficking.[303] The first National Referral Mechanism was endorsed at a session of National Committee members at the end of 2010. A (revised) National Mechanism for Referral of and Support to the Victims of Human Trafficking was adopted by a decision of the Bulgarian Council of Ministers in July 2016, thus making the document official and obligatory. [304] [305] The administration of the National Commission is responsible for the coordination of the Bulgarian National Referral Mechanism.

There are many institutions involved in Bulgaria in preventing human trafficking and in enabling victims to access justice, which are recognised in – and who were involved in establishing – the National Referral Mechanism.[306] These include governmental institutions in the field of justice, migration, foreign affairs, and labour and social affairs. Other important bodies are NGOs and support (service providing) organisations, (including municipalities and other governmental agencies financed through the state budget), police and law enforcement bodies, the prosecution office, courts and legal aid providers. The Labour Inspectorate and Ministry of Labour and Social Affairs are closely engaged and part of the National Referral Mechanism, but trade unions are not yet formally part of the national counter policies and structure. The National Labour Aid Bureau has though been

302 OSCE/ODIHR: *National Referral Mechanism. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*. Warsaw, 2004. Accessed: 26.7.2018.

303 National Commission for Combatting Trafficking in Human Beings, Annual Report 2016, < http://antitraffic.government.bg/wp-content/uploads/5244_NCCTHB_Report_2016Last1_EN.docx > (31 January 2018)

304 Animus Association, 2010. *National Mechanism For Referral And Support Of Trafficked Persons In Bulgaria* http://www.animusassociation.org/wp-content/uploads/2014/03/National-referral-mechanism-for-trafficked-persons-En.pdf

305 See published National Referral Mechanism, https://antitraffic.government.bg/wp-content/uploads/NRM_Bulgaria_EN.pdf

306 In Bulgaria, the establishment of the National Referral Mechanism was initially initiated by the NGO Animus Association in 2008. In cooperation with La Strada International and financial support (MATRA project funding) from the Dutch Ministry of Foreign Affairs, a working group of experts was established including next to Animus, the National Commission, the Chief Directorates of Combating Organized Crime and Border Police; Migration Directorate of the Ministry of Interior, other ministries (Health, Foreign Affairs, Education, Youth and Science, Justice, Labour and Social Policy); the Agency for Social Assistance, State Agency for Child Protection, Employment Agency, State Agency for Refugees, Supreme Cassation Public Prosecutor's Office, international organisations (IOM, UNHCR, ICMPD) and NGOs

included as a formal partner in the revised National Referral Mechanism, adopted in 2016. Also migrant rights groups, of which there are a few in the country, are not yet included in the list of relevant stakeholders. Although they are not officially included in the National Referral Mechanism, they function as actors in the processes of identification, referral and assistance of victims of (trafficking for) labour exploitation, in particular due to their access to migrant communities. Training and other initiatives were organised in collaboration with the National Commission, IOM and other stakeholders.

The National Referral Mechanism refers to referral and support of all identified victims, and the roles and responsibilities of bodies working on migration is recognised. With the increase of migration into Bulgaria, and the acknowledgement of their vulnerability to exploitation, governmental institutions specialised in immigration and asylum law (Migration Directorate under the Ministry of Interior and the State Agency for Refugees), have been trained and became more closely engaged in tackling human trafficking and labour exploitation. The National Programme for Combatting Trafficking in Human Beings includes a variety of activities where these institutions are the main beneficiaries and are involved in training and conferences, with specific focus on identification and referral of victims of human trafficking.

Next to a National Referral Mechanism, Bulgaria was also involved in the development of a transnational referral mechanism, coordinated by the International Centre for Migration Policy Development (ICMPD),[307] which describes cooperation with foreign stakeholders.

4.2 National Commission for Combatting Human Trafficking

The *National Commission for Combatting Trafficking in Human Beings* falls under the Council of Ministers, and its members are 12 state institutions. The Commission plays a central and coordinating role in the implementation of Bulgaria's policy and strategies to counter human trafficking and protect its victims, and supervises interaction between the various institutions and organisations.[308] It coordinates the National Mechanism for Referral of and Support to Human Trafficking Victims. The Commission furthermore receives alerts and handles cases of human trafficking, and performs informal identification of victims. It also coordinates temporary placement shelters, providing protection and support services to victims of trafficking. Local Commissions for Combatting Trafficking in Human Beings have been set up in ten Bulgarian municipalities.[309]

The Commission's administration collects data, monitors work on cases of human trafficking, and provides additional support through the provision of various analyses. The expert working group set up under the Commission includes 30 experts from ministries, agencies, international organisations and NGOs.[310] [311] The Commission established a multi-institutional task force to work on strategic cases and to represent the application of the National Referral Mechanism in practice. Group members look for best solutions for the protection of the rights of the victims, including support and successful prosecution.

307 See https://antitraffic.government.bg/wp-content/uploads/Guidelines_for_Development_of_TRM-EU_EN.pdf

308 See National Referral Mechanism, p.14: https://antitraffic.government.bg/wp-content/uploads/NRM_Bulgaria_EN.pdf

309 In Burgas, Varna, Ruse, Veliko Tarnovo, Sliven, Plovdiv, Pazardzhik, Blagoevgrad and Montana and Pleven, see National Commission for Combatting Trafficking in Human Beings, Annual Report 2016, http://antitraffic.government.bg/wp-content/uploads/5244_NCCTHB_Report_2016Last1_EN.docx

310 Group of experts on action against trafficking in human beings (GRETA), *Report Concerning The Implementation Of The Council Of Europe Convention On Action Against Trafficking In Human Beings By Bulgaria*, 28 January 2016, https://rm.coe.int/1680630d6c

311 Meeting with representatives of the Bulgarian national anti-trafficking commission, fact finding mission March 2017

Although most awareness activity has been focused on Bulgarians planning to move and work abroad, the Commission has increasingly set up prevention activities for migrants, produced and disseminated prevention materials, and organised information sessions with migrants and asylum seekers, with the aim of raising awareness around labour exploitation and human trafficking. In 2017, the Commission conducted an information campaign together with experts from IOM in the SAR centres in Sofia on the risks of human trafficking among migrants (EMPACT – Joint Days of Action against Trafficking in Human Beings).[312] In general, the National Commission implements a variety of activities to prevent trafficking for labour exploitation – focus groups with migrants, national and international forums, social media campaigns, etc.

The current *National Strategy for Combatting Trafficking in Human Beings* was developed for the period 2017-2021. It defines priorities and objectives related to combatting and preventing human trafficking. Measures for strengthening the legal and institutional mechanisms for effective prosecution of perpetrators and ensuring support to victims, including integration support, are part of the strategy. The strategy is monitored by the Secretariat of the Commission, and an established group of experts.[313]

4.3 Other governmental actors

Ministry of Interior

The Ministry of Interior is charged with national security and the upholding of law and order in the country. It is also the Ministry that coordinates several bodies that have a responsibility in the prevention and combatting of trafficking in human beings and related issues, including the Migration Directorate, the Chief Directorate Combatting Organised Crime, Trafficking in Human Beings Section and Chief Directorate Border Police. These bodies are responsible for the formal and informal identification of victims of trafficking and take actions to prevent, detect and investigate cases of human trafficking.[314]

The Migration Directorate is in charge of the identification of trafficked foreign nationals in the territory of Bulgaria. "It decides on the residence of migrants, and can impose coercive administrative measures such as return and detention orders. The Directorate also collects information and refers trafficking cases to the prosecutor." A new action plan for 2018 on the implementation of the Migration, Asylum and Integration Strategy was adopted in June 2018, which is supervised by the Ministry of Interior. This plan aims to regulate the procedure to assist refugees in finding work, and to provide them with information about labour legislation and the rights of workers in Bulgaria.[315]

312 See http://antitraffic.government.bg/%d0%bd%d0%b0%d1%86%d0%b8%d0%be%d0%bd%d0%b0%d0%bb%d0%b5%d0%bd-%d0%b4%d0%be%d0%ba%d0%bb%d0%b0%d0%b4-2017/ (in Bulgarian)

313 See website National Commission for Combatting Trafficking in Human Beings, https://antitraffic.government.bg/en/help#useful-links

314 See further www.mvr.bg

315 Social Fieldwork Research (FRANET), *Supporting Victims Of Severe Forms Of Labour Exploitation In Having Access To Justice In EU Member* States. Bulgaria, 2014.http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_bg.pdf p.14

Law Enforcement Human Trafficking Unit under the General Director for Combating Organised Crime

The main role of the Law Enforcement Human Trafficking Unit is to investigate cases of identified persons involved in trafficking of human beings, to ensure criminal prosecution of perpetrators. The Unit participates in crime investigations committed in the territory of Bulgaria, as well as participating in parallel human trafficking investigations with partners in other countries, including joint investigations with the support of Eurojust and Europol.

The Unit also has a responsibility for identifying trafficking leaders, ensuring protection and assistance to victims, and in performing checks on received signals for presumed human trafficking cases. The Unit further participates in the development and implementation of information campaigns on the prevention of trafficking in human beings.

Border police

The border police are a specialised police force to guard the borders and control the border regime. Their main aim is to "prevent irregular border crossings, and identify human trafficking and the use of false identity documents for that purpose." The Ministry of Interior supervises the border police.[316] The border police is an important actor in identifying indicators for (and cases of) human trafficking where people cross the country's borders. However, most cases they have identified related in particular to Bulgarian workers who were exploited in other countries.

Several other Ministries have a responsibility for the prevention and combatting of human trafficking. The *State Agency for National Security* detects, counters and prevents trafficking in human beings as an offence, in line with the State Security Agency Act. *The Ministry of Foreign Affairs*[317] is in charge of providing support to trafficked people identified in other countries. Bulgaria's diplomatic and consular representations abroad facilitate the return of Bulgarian national victims of trafficking. Together with the Ministry of Interior bodies, the Ministry of Foreign Affairs assists in issuing ID documents for Bulgarian nationals trafficked abroad.

The *State Agency for Refugees* is "the decision-making body on applications for refugee status, and responsible for the reception conditions of asylum seekers." The Agency is also in charge of the informal identification of victims of trafficking among non-EU country nationals seeking asylum in the Republic of Bulgaria, and ensures their access to specialised aid. This body falls directly under the Council of Ministries, including the Anti-Trafficking Commission.

The *Agency for Social Assistance* falls under the Ministry of Labour and Social Policy.[318] The Agency is committed to meeting the social needs of victims of trafficking in the course of their re-integration, as set forth in the Social Assistance Act and the Child Protection Act. It may conduct informal identification of victims of trafficking. It organises, controls and monitors the provision of services through the Directorates for Social Support. At municipal level other services are also provided. Crisis centres for victims of violence (including trafficking) are registered throughout the country under the Social Services Act, and are financed by the state budget after being approved by the Social Assistance Agency (SAA).

316 Ibid p.17
317 www.mfg.government.bg
318 http://www.asp.government.bg/web/guest/home1

The *Ministry of Health* provides support to trafficked people through its Emergency Aid Centres and Emergency Medical Units when medical service is required, or in cases of emergencies outside the system for mandatory health insurance.

The *Ministry of Education* is in charge of educational programmes for long-term integration of trafficked people. The *State Agency for Child Protection* falls under the Council of Ministers, and is responsible for all matters of child protection activities. "It coordinates the implementation of the Coordination Mechanism for Referral, Care and Protection of Repatriated Bulgarian Unaccompanied Minors and Children Victims of Trafficking Returning from Abroad."

The *National Legal Aid Bureau* provides free legal aid in the form of legal consulting and procedural representation for victims of trafficking, and runs a national hotline on legal aid. The *Prosecutor's Office* is responsible for conducting the pre-trial investigation of trafficking cases and filing the cases with court. Related actors are the *Ministry of Justice* and the *National Council for Assistance and Compensation to Crime Victims.*

The *Ministry of Labour and Social Policy* is responsible for observing that labour and social security legislation is adequately implemented in Bulgaria. It thereby supervises the work of the Employment Agency and the General Labour Inspectorate.

Employment Agency

The Employment Agency[319] implements the national policy on unemployment. It is an intermediary between job seekers and employers. The Employment Agency is part of the national expert group of the National Commission for Combatting Trafficking in Human Beings. It is the Employment Agency's task to provide information and take preventative measures against human trafficking and labour exploitation, partly via licensing of recruitment and employment companies. The Agency further provides information through its website on available jobs, work conditions and workers' rights abroad, in particular for Bulgarian citizens aiming to work in foreign countries. Via their local labour offices, they also provide direct services to both national and foreign workers, including special information days organised three to four times per year.

Workers registered at the employment agency receive information on employment, applying for jobs and labour rights, e.g. what a contract should include, how to check job offers and preparation of CVs. In 2016, 5,000 people attended such information sessions. These information sessions are also seen as a prevention of labour exploitation and human trafficking. [320]

The national labour offices work closely with the local commissions on combatting trafficking, coordinated by the National Commission for Combatting Trafficking in Human Beings, and conduct common training on the topic of labour exploitation and human trafficking. These offices can check or organise a meeting with local Bulgarian (employment) companies on the request of a (future) employee. One of the tasks of the Employment Agency is to issue work permits for third country nationals, to enable them to access the Bulgarian labour market. To prevent labour exploitation among these workers, the agency checks the quality of the work offered when issuing these permits.

319 https://www.az.government.bg/

320 There are conditions for obtaining social (unemployment) benefits; including regular meetings with the agency and proof for applying for jobs. In case workers are not fulfilling these conditions, the registration and thus the support can be cancelled.

Registration on the date register of the National Revenue Agency, coordinated by the Employment Agency, is important as it provides workers with social benefits. The Employment Agency is not responsible for the provision of social benefits, but works closely with the agency responsible for that.[321]

General Labour Inspectorate Executive Agency

The Bulgaria General Labour Inspectorate Executive Agency is responsible for carrying out inspections to monitor employers' compliance with laws protecting the rights of workers. There are around 360-500 labour inspectors[322] across Bulgaria. The mandate of the Labour Inspectorate "includes health and safety at work, labour relations, unpaid wages, control over the operation of temporary employment companies and mediators, and control over the operation of companies that send workers abroad. It co-operates closely with the Employment Agency."

In an interview conducted for this report, the Bulgarian Labour Inspectorate reported that, "the main aim for the Inspectorate is not to punish the employer or to find violations, but rather to cooperate with employers and to look for ways to improve the situation. In general the Labour Inspectorate tries to ensure to keep the dialogue with employers. Inspections are therefore in particular seen as a means to prevent exploitative situations."

As noted before, the Labour Inspectorate has to inform the police and migration authorities when a (third country national) worker in an irregular situation is identified. If the worker has no required work permit, both the worker and employer will be sanctioned with a fine.[323]

There are different opportunities and reasons for conducting an inspection. These are:[324]

- **Scheduled inspections** – a national and regional planning of company checks; only a certain amount of companies can be checked each year.
- **Campaigns** – sometimes specific campaigns or actions are carried out in certain sectors, for example around the construction of highways.
- **Complaint-based inspections** – inspection after complaints have been received; complaints can be lodged by trade unions, workers, employers or other institutions.
- **Accidents** – when an accident occurred with a worker, often an inspection will follow.
- **Follow-up inspections** – an earlier scheduled inspection can be followed with a second or third inspection, even the same day or evening, when there are signals that something is not in order. When it is felt that no adequate information was provided, the Inspectorate might also decide to conduct a second control.

321 There are conditions for obtaining social (unemployment) benefits; including regular meetings with the agency and proof for applying for jobs. In case workers are not fulfilling these conditions, the registration and thus the support can be cancelled.

322 Information provided during fact finding mission by LSI in 2017. Stakeholders mentioned figures of 360 labour inspectors; 400 inspectors and a total of 495 employees at the GLIEA. It was stated that there are 28 regional labour inspectorate districts, next to the labour inspectorate office in Sofia.

323 Social Fieldwork Research (FRANET), *Supporting Victims Of Severe Forms Of Labour Exploitation In Having Access To Justice In EU Member States*. Bulgaria, 2014.http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_bg.pdf p.13

324 Interview Labour inspectorate Bulgaria, March 1, 2017 fact finding mission

4.4 Non-governmental organisations

Support organisations have a key role in preventing abuses and assisting people who are trafficked or victims of forced labour or labour exploitation. These organisations are in charge of victims' informal identification, and of providing specialised emergency and long-term psychological, social, health and legal services, as reflected in the National Referral Mechanism. Several of them operate hotlines, including the hotline for victims of violence run by the Animus Association Foundation; the national hotline against human trafficking (A21 Campaign); the national hotline for children; and the hotline for missing children. Alongside NGOS, the International Organisation for Migration also runs a hotline.

Animus Association[325] is one of the main NGOs assisting victims of human trafficking in Bulgaria, and has been the consortium partner for the Rights at Work project in Bulgaria. The organisation has established specialised centres for professional help for survivors of violence, including victims of trafficking. It runs a centre for rehabilitation, counselling, psychotherapy and psychoanalysis. These services comprise: a 24-hour helpline for victims of violence; 24-hour crisis unit; counselling and psychotherapeutic programmes for adults; counselling and psychotherapeutic programmes for children and adolescents; and a social support programme.

The organisation works on prevention, and developed and conducted educational and training programmes and campaigns. It closely cooperates with other stakeholders, monitors the national situation based on its grassroots experience, and is active on lobbying and advocacy to realise better rights for trafficked people.

Other important non-governmental organisations include the *Alliance for Protection Against Gender-Based Violence,* which has several member organisations, including the *Bulgarian Gender Research Foundation, SOS Families at Risk Foundation, Demetra Association, Open Door Foundation* and a couple more. Other organisations that provide support and prevention programmes include Caritas Rousse, Gender Alternatives Foundation, Ravnovesie Foundation, Pulse Foundation and Nadia Centre. There are some other NGOs engaged in human trafficking prevention work.

For example, the *Bulgarian Association for Family Planning* has developed trafficking prevention programmes, and targets young people and vulnerable groups to discuss and raise awareness about trafficking for sexual exploitation and labour exploitation.

The Bulgarian NGO *Amalipe* – the *Center for Interethnic Dialogue and Tolerance* based in Veliko Tarnovo[326] – works on the prevention of labour exploitation of Bulgarians, in particular Roma people, but focuses again mainly on people planning to migrate abroad. Organisations that work mainly on monitoring, advocacy and research related to human trafficking, labour exploitation and other human rights violations, include the Centre for Study of Democracy, the Gender Research Foundation and Bulgarian Helsinki Committee.

There are some – but unfortunately not many – organisations in Bulgaria that address rights protection for migrants, or specifically migrant workers and refugees. Those that do exist have mostly not yet developed close cooperation with NGOs and other stakeholders working on addressing human trafficking. The Council for Women Refugees is one of the organisations active on the issue of preventing labour exploitation.

325 http://animusassociation.org/en/
326 http://amalipe.com/index.php?nav=home&lang=2

Organisations working in the field with migrants and refugees often consider victims of trafficking to be outside their target group, or not a priority, given that limited capacity requires that choices are made with regard to expertise and services that can be developed and offered. Organisations and institutions whose mandate it is to work mainly with victims of trafficking also see migrants as a group that falls outside their scope of work. Both groups do not seem to closely cooperate. There has been some work done in Bulgaria to address this gap. To reach out to refugees and asylum seekers at risk of exploitation, social workers who come into contact with them were trained to be able to detect indications of human trafficking, and how to register and refer cases to the authorities.

The *Center for Legal Aid (CLA) – Voice* in Bulgaria is one of the few organisations supporting migrants and refugees. This organisation is a member of PICUM, the Brussels-based Platform for International Cooperation on Undocumented Migrant Workers. The Center for Legal Aid aims to promote the rights of migrants, refugees and asylum seekers in the territory of Bulgaria, through legal aid and advocacy. According their website "since 2009, the CLA has promoted progressive legislative reform and raised awareness on asylum, migration and integration and provides pro bono legal consultations to asylum seekers, refugees and migrants, as well as legal representation in administrative and judicial proceedings on the national and European levels." The organisation further engages in research and monitoring, to support its advocacy initiatives, and participates in national, regional and Europe-wide networks.[327]

The organisation *Foundation for Access to Rights (FAR)* also works on the protection of human rights and the establishment of best practices on access to rights within the country, supporting migrant workers and refugees legally.

There are not many NGOs that address corporate misconduct, or that are active on monitoring working conditions and/or empowering workers in specific labour sectors. The Clean Clothes Campaign has no formal members yet in Bulgaria, although they have cooperated with Bulgarian NGOs for their research work.

The *Bulgarian Council on Refugees and Migrants (BCRM)*[328] was founded in 2005 by the Bulgarian Red Cross, the Bulgarian Helsinki Committee and Caritas Bulgaria as a platform for common activities on refugee and migration policy, protection and integration of refugees and migrants. In 2007, the Association for Integration of Refugees and Migrants also joined the BCRM.

The BCRM aims to "influence and support the social transformation towards efficient protection and integration of refugees and migrants." The organisation has been implementing different projects related to advocacy, networking and development of guidelines related to integration of refugees in Bulgaria. The organisation further monitors and evaluates integration of refugees and collects best practices.[329]

There are some international organisations active in Bulgaria on the issue. The *United Nations High Commissioner for Refugees* (UNHCR) is mandated to observe the country's commitments in providing international protection to people in need.

327 See for more information http://www.centerforlegalaid.com/en

328 http://www.bcrm-bg.org/en/projects.html

329 It established a web-based information platform www.refugee-integration.bg as an information resource on integration of refugees for Bulgarian municipalities, and all other relevant actors. Also a mapping on refugee integration was established: www.mapping.refugee-integration.bg

The *International Organisation for Migration (IOM)* is in charge of victim identification and ensures trafficked people's safe return and access to specialised social and psychological services. As noted they also run a helpline.

4.5 Trade unions

The two major trade unions, the Confederation of Independent Trade Unions of Bulgaria (KNSB/CITUB)[330] and Labour Confederation Podkrepa, represent employees on "matters of labour, social security and cost of living through collective bargaining, participation in tripartite co-operation, organising strikes and other actions within the law." In addition to negotiating agreements, CITUB has established a research institute, ISTUR, to provide research and information to inform social and economic developments in Bulgaria. CITUB also runs a training centre and has played an active role at the European and international levels. The Bulgarian transport sector union FTTUB (member of KNSB/CITUB) has conducted awareness-raising campaigns on violence against women in the sector, and raises the issue through collective bargaining.[331]

There is little information available on trade union support to migrant workers. A representative of Podkrepa stated in 2017 that "they cannot yet support the rights of all Bulgarian workers, and therefore migrant workers – which is a relatively small group – are not yet a focus group for the trade union, also as they have limited access to them." [332] There are no migrant workers among their members. The representative of Podkrepa further stated that the difficulties in reaching migrant workers and Bulgarian workers are quite similar. "In general, there is no cultural tradition of rights protection of workers in the country, nor is there strong support for mobilising or unionising workers." Podkrepa specifically stated they didn't have much access to unregulated sectors, and that even in regulated sectors it is difficult to reach out to workers who work for small companies.[333]

KSNB (CITUB) did report they provide support in Bulgaria to non-members and represent workers who are exploited in court. However, not much information was provided about whether they also support migrant workers and how often cases of severe exploitation have been identified or referred.

According to Animus Association, KNSB is quite active on the prevention of labour exploitation of Bulgarians (abroad and within the country), and would support migrants in situations of violation of labour rights and exploitation.[334]

Some NGO representatives interviewed reported that workers were often sceptical about trade unions, questioning whether a trade union cared about workers' rights in all situations, or only supported members or those with a long-term contract. Some interviewees were of the opinion that trade unions should make more of an effort to support all workers' rights in Bulgaria.[335]

330 http://www.knsb-bg.org/index.php
331 https://www.etuc.org/sites/default/files/document/files/bulgaria_etuc_safe_at_home_safe_at_work_final_0.pdf - page 2
332 Fact finding mission to Bulgaria, meeting Podkrepa, March, 2017
333 Fact finding mission to Bulgaria, meeting Podkrepa, March, 2017
334 Information provided by Animus Association, March 2019
335 Fact finding mission Bulgaria March 2017

4.6 Recruitment agencies and the private sector

As in other European countries, the recruitment sector is very diverse, ranging from large organisations such as Manpower, ADECCO and Randstad to medium-sized and one-person businesses.

As noted, the Bulgarian Employment Agency in particular monitors the recruitment and employment agencies active in the country, via a licensing and monitoring system. There are three types of licensing: licensing for recruitment agencies for recruitment in Bulgaria, licensing for recruitment abroad, and a specific license for employment within the shipping industry. Where possible, private recruitment and employment agencies offering vacancies and looking for people to employ, are checked by the Employment Agency to define whether the company is bona fide and provides for adequate employment and contracts. This is mainly done by checking information via the internet and via the EU Commission's employment services network EURES.[336]

Ethical recruitment

With regard to addressing exploitation in the recruitment sector, large agencies typically have programmes to address exploitation of their recruited workers. To ensure adequate compliance with labour laws Manpower, for instance, states that it conducts interviews with all companies they (aim to) work with. They also report that they investigate these companies' branding and reputation and work closely with unions in some regions, to see if the employer is 'having good work habits and follows the legal situation'. Some Bulgarian companies, for instance, do not pay all social security benefits to workers. In the past the International Organisation for Migration in Geneva launched the International Recruitment Integrity System (IRIS), a social compliance scheme designed to promote ethical international recruitment. It works by defining and setting a benchmark for ethical recruitment (the IRIS Standard), establishing a voluntary certification scheme for ethical labour recruiters, as well as a compliance and monitoring mechanism.[337] This initiative is also promoted by the International Organisation for Migration in Bulgaria.

336 Information provided by the Bulgarian Employment Agency, Fact finding mission, March 2017
337 See https://iris.iom.int/

5 Challenges and conclusions

Bulgaria is a country of origin, transit and destination for trafficked labour in the region. However, Bulgaria is mainly known as one of the main countries of origin for victims of trafficking across Europe, and relevant national stakeholders have been paying much attention to assisting Bulgarian nationals trafficked abroad. In general, a lack of awareness on (trafficking for) labour exploitation occurring within Bulgaria is noted among stakeholders, who still mainly refer – when talking about severe forms of labour exploitation of (migrant) workers – to cases of Bulgarian nationals working abroad. There is neither much awareness nor experience of the identification and assistance of exploited and vulnerable migrant workers in Bulgaria.

According to NGOs, stakeholders often want proof of migrant labour/exploitation, as it remains an invisible problem they are not much convinced about, or are unaware of the possibility that labour exploitation of migrants is happening in Bulgaria.[338]

Others believe that this lack of awareness also relates to the fact that labour exploitation has to a certain extent become the norm in Bulgaria, with a lack of decent work for a large group of workers. Long working hours, low wages below the already very low minimum wage, and/or requests to provide tasks or services other than those promised are seen as 'acceptable' issues. As a result, severe forms of labour exploitation are often seen as just a violation of the labour law, not as a crime that needs to be investigated.

Nevertheless, the topic of human trafficking for labour exploitation within Bulgaria is getting more attention from relevant stakeholders, the media and high-level politicians. This is partly as a result of advocacy and other actions taken up by the National Commission for Combatting Trafficking in Human Beings, Animus Association and others. It will take time until this results in more identification of cases, as most stakeholders still have not identified, reported or referred cases of severe labour exploitation.

As for gaps in the legal framework, it has been reported that the police can only investigate labour exploitation, when there is evidence of force being used. As a result stakeholders believe that migrant workers are not protected adequately under the legal framework, and also in practice they see many barriers to justice. Trade unions are reported as not yet sufficiently engaged in the institutional framework, or in programmes addressing human trafficking and forced labour. Support to non-member migrant workers is often not part of their mandate. Trade unions themselves reported a lack of access to some of the most vulnerable sectors, including agriculture.

As a result of low awareness and limited research, there is little known about the actual scale of severe labour exploitation occurring within the country's borders. Cases of human trafficking are registered, as well as violations of labour law. Every year cases of Bulgarian nationals and migrants being exploited within the country have been identified and reported by the National Commission and the Animus Association Foundation, but figures are much lower than in other countries. Cases of exploitation of third country nationals that were initially reported and investigated were not prosecuted for the crime of human trafficking.

338 Interview Animus Association, fact finding mission, March 2017

Media and researchers have reported the vulnerability of workers in different labour sectors, but there are no figures on identified cases of severe labour exploitation, other than human trafficking, except for figures provided by the Bulgarian Labour Inspectorate on violations of the labour code and identified workers working in irregular situations.

With the growing influx of migrants to Bulgaria, partly as a result of the call for more migrant workers, as well as an expected increase in third country nationals that are returned to Bulgaria based on the Dublin treaty, it is important that more attention is given to workers' rights and the vulnerability of migrant workers in the country, as well as ensuring that cases of severe exploitation can be identified and victims referred to social assistance and protection programmes.

6 Recommendations

Based on the Rights at Work assessment and activities, the following recommendations are made:

1 Continuous national debate and exchange to discuss gaps and possible solutions related to identifying and prosecuting human trafficking, forced labour and labour exploitation should be ensured.

2 More prevention strategies are needed to address the root causes of severe forms of domestic labour exploitation, and to raise awareness amongst all relevant stakeholders, including for the vulnerable position of (undocumented) migrant workers.

3 Revision of legislation should be considered to ensure that forced labour and other forms of severe labour exploitation can be better prosecuted under criminal law. Harmonised interpretation of national legislation should be promoted too.

4 Ratification of the Istanbul Convention on Violence against Women, as well as promoting other international legislation securing the rights of female migrant workers and other vulnerable groups, e.g. the Global Compact on Safe and Orderly Migration and the Additional Forced Labour Protocol of 2014.[339]

5 Schemes and programmes set up to ease visas for migrant workers should include clear monitoring mechanisms to prevent labour exploitation of (migrant) workers.

6 Control mechanisms should be set up to monitor businesses' compliance with labour standards and human rights, and to make the private sector more accountable. Incentives should be provided for companies that comply, while enacting sanctions for businesses that do not respect human rights. Due diligence should be promoted. Bulgaria should consider developing a National Action Plan on business and human rights, and/or establishing binding measures to hold businesses more accountable.

7 More access to employment and integration in the labour market should be ensured for all workers, including by prevention of discrimination of workers and establishing unemployment protection to reduce the vulnerability of workers.

8 Decent working conditions including decent remuneration should be promoted, and informal and unregulated work should be brought within the protection of labour laws. Labour rights should apply to all workers, irrespective of migration and residence status.

9 There is a need to increase migrant workers' awareness of their rights by means of prevention programmes and information provision and campaigns organised by the state, public institutions, trade unions and NGOs via social media and institutions in Bulgaria and countries of origin of migrants.

10 Workers should be involved in initiatives to address labour exploitation and human trafficking (e.g. worker-led monitoring), and engage migrant workers in sharing experiences in the country of origin.

339 P029 - Protocol of 2014 to the Forced Labour Convention, 1930

11 The identification of severe labour exploitation cases should be increased and better enforcement of labour standards ensured through sufficient monitoring capacity of the Labour Inspectorate. Increased workplace inspections in vulnerable sectors and outreach to vulnerable workers are needed.

12 A firewall should be in place: inspections of violations of labour laws should be de-linked from the control of residence status of workers, so that workers have an opportunity to report exploitation without fearing arrest and deportation.

13 Safe reporting and adequate complaint mechanisms are required to encourage victims to report cases of labour exploitation. It should become easier for workers to file complaints, and Bulgaria could consider to establish an OECD National Contact Point for complaints against misconduct by private sector actors.

14 The dialogue between workers, employers and support workers' initiatives should be improved. Trade unions should make workers more aware of what unions can do to defend their rights and encourage migrants to join them, since they have the legal means of protecting workers. Trade unions should be part of programmes and institutional frameworks addressing human trafficking, forced labour and other forms of labour exploitation.

15 Trade unions and alternative workers' organisations should increase their access to workers in all vulnerable sectors, and raise awareness of and advocate for (undocumented) migrants workers' rights and promoted human rights, equality and labour standards for all workers.

16 All victims of labour exploitation, including victims of human trafficking and forced labour, should have access to remedies through judicial, administrative and legislative means; prosecutors should be encouraged to request restitution during criminal cases and to systematically inform victims of their right to pursue civil suits against their traffickers.

17 Improved criminal justice responses are needed to reduce the number of ineffective investigations that do not result in prosecution.

18 Improve training and efforts among all relevant stakeholders to identify victims proactively, particularly among unaccompanied children, migrants/refugees and other vulnerable groups.

19 Compile and provide comprehensive and coherent statistical data on human trafficking, forced labour and other forms of labour exploitation, including on investigation, prosecution and adjudication of human trafficking cases.

20 Ensure adequate funding for NGOs and the implementation of policy actions and measures, including for the implementation of the National Action Plan and National Referral Mechanism on human trafficking.

In focus: Romania

1 National Context

This chapter explores the national Romanian context including the political, social and economic situation. It looks at national employment and demand and worker access to the labour market, as well as vulnerability to labour exploitation among national and migrant workers in different economic sectors. Lastly it reflects briefly on workers and trade union organising.

1.1 Political situation

Romania continues to face political instability. The Social Democrat-led government came to power in early 2017, and has since been the target of mass criticism for its policies. In December 2018, the government narrowly survived a vote of no confidence.[340] High levels of corruption, bribery and the abuse of power remain a problem.[341] There have been large public protests across the country over the last two years, in particular against proposed laws extending pardons and amnesties for corruption and official misconduct,[342] which would create impunity for those conducting such practices regardless of the national 2016-2020 anti-corruption strategy that is already in place.

Transparency International ranks Romania as one of EU's most corrupt states.[343] The European Commission has been monitoring Romania's justice system since the country's entry into the EU in 2007, and reported in 2018 that "developments throughout the past years have largely brought into question the irreversibility and sustainability of Romania's substantial progress on reforming its judicial system and tackling high-level corruption." They further stated that the implementation of the 2016-2020 national anti-corruption strategy[344] has been progressing at a technical level, but requires more political support "as corruption and governance issues in the public sector persist at all levels and are among the top challenges for the business environment."[345]

340 Members of Parliament were asked to vote to indicate whether they still supported the government in power. Source: Reuters, https://af.reuters.com/article/worldNews/idAFKCN1OJ1XB

341 See *Report Freedom in the World 2018: Democracy in Crisis – Country Report Romania* by Freedom House

342 An emergency ordinance passed in January 2017, which decriminalises some offences, including official misconduct in cases where the financial damage is less than 200,000 lei (£38,000). Changes to criminal codes and other judicial bills also raised criticism from thousands of magistrates, the opposition, human rights organisations as well as from the European Commission and the U.S. State Department. Sources: Amnesty International annual and The Guardian

343 See corruption perception index 2017, published in February 2018 https://www.transparency.org/news/feature/corruption_perceptions_index_2017

344 The National Anticorruption Strategy (NSA) 2016-2020 was adopted by Government Decision no. 583/2016. The main purpose of the NSA 2016-2020 is to promote integrity, by strictly applying the legal and institutional framework for preventing and combatting corruption in Romania. It also aims to increase the quality and impact of implementing the provisions on institutional transparency in the public sector. It includes measures to strengthen the budgetary transparency platform developed by the Ministry of Public Finances. The strategy also foresees the adoption of the necessary legal framework to introduce a standard methodology to assess corruption risks and the implementation of the methodology, at central level, as a prerequisite for updating, biennially, the integrity plans. A portal was launched in June 2017 https://lib.ohchr.org/HRBodies/UPR/_layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/Session29/RO/A_HRC_WG%206_29_ROU_1_Romania_AdvanceVersion_E.docx&action=default&DefaultItemOpen=1

345 Council Recommendation of 13 July 2018 on the 2018 National Reform Programme of Romania and delivering a Council opinion on the 2018 Convergence Programme of Romania (2018/C320/22)

Human rights organisations believe that the Romanian judiciary can generally still operate independently but "faces pressure from the executive and legislative branches."[346, 347]

Civic freedoms are guaranteed in Romanian law, and in general people are able to form associations and can operate freely. Nevertheless, organisations that criticise the government have been targets of smear campaigns.[348] The Romanian government also proposed amendments in 2017 to the law regulating NGOs and foundations, introducing additional administrative and financial obligations. National NGOs criticised these new measures (two bills that are still pending) as "arbitrary, unnecessary and vague",[349] stating that the government wants to silence organisations working on democracy, anti-corruption and the rule of law.[350] It is expected that these proposed amendments will seriously harm civil society and social movements organising in the country.[351] NGOs have been accused of misusing public funds or acting as secret agents for foreign funders who wish to somehow exploit and oppress Romanians.[352] Also, organisations addressing issues of human trafficking and labour exploitation lack sufficient funding,[353] and have to rely to a great extent on international and private donors.[354]

1.2 Social economic situation

Although the unemployment rate dropped to around four per cent in 2018,[355] which is reported to be the lowest level in more than 20 years, inequality and poverty rates remain high in Romania. There exist big gaps between rich and poor, and between rural and urban areas. Economic reports on Romania show that large groups – in particular young people and those living in rural areas – are disconnected from access to education, training and employment.

In addition, employee wages remain low in Romania compared to the average in the EU.[356] Starting from 1 January 2018, the gross monthly minimum wage was 1,900 lei (€ 408) during a working schedule of 168.8 hours per month. On 1 January 2019, the minimum wage increased to the equivalent of around € 442 per month. In 2017, around 30 per cent of workers earned the minimum wage. Employees themselves are responsible for their own

346 See press release Freedom House, 2017 https://freedomhouse.org/article/romania-reverses-anti-corruption-efforts.

347 According to Freedom House, "The country's courts and law enforcement authorities continue to suffer from problems including corruption, political influence, staffing shortages and inefficient resource allocation. Dozens of law enforcement officials were arrested and prosecuted during the year for bribery, abuse of power and corruption." Separately, in November 2017, the European Commission warned that the lack of an independent and powerful process for appointing top prosecutors threatened the rule of law. Many officials and lawmakers retain their positions despite criminal indictments or convictions - https://freedomhouse.org/report/freedom-world/2018/romania

348 Civicus website, https://www.civicus.org/index.php

349 https://www.amnesty.org/en/countries/europe-and-central-asia/romania/report-romania/

350 https://www.liberties.eu/en/campaigns/romanian-civil-society-freedom-under-threat-campaign/263

351 https://freedomhouse.org/report/freedom-world/2018/romania

352 https://civilsocietyeuropedoteu.files.wordpress.com/2018/10/fact-sheet-ngos-restrictions-romania.pdf

353 As among others reflected in the 2018 US TIP report https://ro.usembassy.gov/2018-trafficking-in-persons-report/

354 GRETA (2016) *Report Concerning The Implementation Of The Council Of Europe Convention On Action Against Trafficking In Human Beings By Romania* Second Evaluation Round Adopted on 8 July 2016 Published on 30 September 2016

355 In Romania, the unemployment rate measures the number of people actively looking for a job as a percentage of the labour force. See https://tradingeconomics.com/romania/unemployment-rate. There are also other sources providing slightly different figures.

356 The gross minimum wage increased from 700 lei (c. € 162) in 2012 to 1,450 lei (c. € 315) in 2017 and reached 1,900 lei (c. € 413) in 2018, including employers' social contributions.

social protection, and access to public social benefits is limited.[357, 358] Although a law on a minimum inclusion income is expected to "increase the adequacy and coverage of social benefits," this law has already been postponed a few times and is now planned for 2019.[359]

Poverty and social exclusion

As noted, the risk of poverty or social exclusion is high in Romania,[360] and huge income inequality persists. According to economic statistics, "over a quarter of Romania's population lives on less than € 5 a day, the highest poverty rate in the EU. Half of the poorest 40 per cent of Romanians do not work, while another 28 per cent live off homegrown products (subsistence agriculture)."[361] High poverty risks are mostly associated with lack of employment, lack of opportunities and lack of social services.

Young people, families with children, people with disabilities, the rural population and Roma people have been particularly affected. The Roma minority group faces especially difficult circumstances, with a poverty rate approaching 70 per cent. "Romania is home to up to 2.5 million Roma in a population of about 19 million, but about 90 per cent of these families live in extreme poverty and are targets of racism."[362] They face "a very high inequality of opportunity and poverty rates, low employment, poor educational attainment, low health coverage and adverse housing conditions. Residential segregation, forced evictions and discrimination at work persist."[363]

Access to employment, labour force participation and labour emigration

Despite recent improvements, labour force participation rates remain well below EU averages. Currently, labour force participation is just 66 per cent (56 per cent for Romanian women). Romania's population shrank from 22.8 to 19.6 million between 2000 and 2018. The population has been declining for almost three decades and this is expected to continue, due to falling birth rates and emigration, while the ageing of the population continues.[364] Between three and five million Romanians[365]—most of them of prime working age—live and work in other parts of the European Union. Shortages of relevant skills and mismatches between worker supply and demand play a role, as well as the inability of the education system to fit employers' needs and the need for higher technically skilled people.[366, 367] According to the European Commission, the government does not use its substantial labour potential and has made little progress in ensuring that certain population groups have more access to the national labour market.[368]

357 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-romania-en.pdf

358 The government adopted a series of amendments to the fiscal code (Emergency Ordinance 79/2017), which entered into force January 2018. One of the most important provisions of the Ordinance relates to the transfer of responsibility for social security contributions from the employer to the employee. Apart from increasing the tax burden for employees, the measure has the potential to decrease the net income. If the gross wages of the employees are not increased accordingly, the transfer of social contributions generates a drop in the employees' revenues by 16.6 per cent (according to studies). Trade unions denounced the violation of European and international standards on the transfer of social security contributions and organised several protests, according Eurofound.

359 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-romania-en.pdf

360 Source: Amnesty 2017/2018 and US TIP report

361 http://blogs.worldbank.org/europeandcentralasia/towards-more-prosperous-and-inclusive-romania

362 Source: World Bank 2017

363 Amnesty report 2017/2018 and US TIP report 2018

364 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-romania-en.pdf

365 There are different estimates on how many Romanians left, UN statistics mention that 3.4 million Romanians left the country since Romania joined the EU in 2007

366 https://www.romania-insider.com/find-employees-romania/

367 https://www.romania-insider.com/find-employees-romania/

368 Council Recommendation of 13 July 2018 on the 2018 National Reform Programme of Romania and delivering a Council opinion on the 2018 Convergence Programme of Romania (2018/C320/22)

1.3 Demand for migrant workers and migrant access to labour

Disregarding the country's unused labour potential, private sector actors demand the easing of labour migration rules for foreign (third country national) workers, claiming a shortage of one million workers.[369] This high need for foreign workers is partly disputed, and according to some not adequately proven by the available data, especially as a large part of the available workforce is inactive. Critics believe the private sector should instead stimulate and improve access to labour for national workers. The demand for foreign workers can therefore possibly partly be seen as a demand for cheaper foreign labour to increase profits and lower costs for the Romanian private sector. It is at least remarkable that in 2018 the Romanian parliament passed a law decreeing that employers no longer have to pay the minimum wage for non-EU workers, even though as noted, the minimum wage in Romania is already among the lowest in the EU.[370]

Increasing work permits for non-EU foreign nationals

Recent new legislation and the issuing of work permits for non-EU foreign nationals have eased procedures to recruit foreign workers in the last few years. A Romanian Ordinance of 2016 gave multinational companies the right to employ third country nationals on secondment for a longer period (up to three years), and simplified the immigration process around residence permits for foreigners.[371]

In July 2018, the Romanian Ministry of Labour also agreed to increase quotas for work permits for non-EU foreign workers; up to 8,000 for permanent workers and up to 13,200 for posted workers, seasonal and other types of foreign employees. Official data from July 2018 shows a total number of 17,089 non-EU foreign employees in Romania, including posted workers. These statistics do not include EU citizens, who do not need a permit to work in Romania.[372] In December 2018, the Romanian government announced a further increase of quotas for non-EU foreign workers in 2019, up to 13,500 work permits.[373]

Migrants in Romania

Although Romania is still not a very popular destination for economic migrants, due to low income standards and Romania being among the poorest countries in the EU, it is expected that the actual number of foreign workers in Romania is much higher than the official figures, due to unreported work.

Romania is a nexus point for migration flows from the north (Moldova, Ukraine and other parts of the former Soviet Union) and the south (Turkey, Iran, Iraq, Afghanistan). Since 2014 the country has experienced growing waves of immigration, and because more work permits for third country nationals are being issued, the number of migrant workers in the country is quickly expanding. Migrants mostly come from Turkey, China, Vietnam and the Republic of Moldova, but also from other former Soviet Union, other European countries, North Africa and the Middle East – Syria (including refugees from the Syrian civil war), Lebanon

369 https://www.romania-insider.com/find-employees-romania/

370 Now a non-EU worker can be paid with a salary starting at 1,162 lei net, instead of at least 2,500 lei net, the average net salary in Romania. See further http://business-review.eu/business/the-parliament-passed-the-low-who-reduced-the-mandatory-pay-for-non-eu-employees-to-the-minimum-wage-190330

371 https://home.kpmg/xx/en/home/insights/2016/09/flash-alert-2016-105.html

372 http://business-review.eu/business/romanias-government-to-issue-additional-5200-work-permits-for-foreign-workers-in-2018-175484 - see also: http://www.mmuncii.ro/j33/index.php/ro/ and http://business-review.eu/business/romanian-government-to-issue-all-time-high-13500-work-permits-for-foreign-workers-in-2019-192669

373 Source: http://business-review.eu/business/romanian-government-to-issue-all-time-high-13500-work-permits-for-foreign-workers-in-2019-192669

and Iraq.[374] As a result of earlier migration flows there is quite a big community of people from Peru, who came to Romania during the communist period. There are also Korean and Pakistani migrant groups.

Although China and Turkey are still the two leading countries of origin for migrant workers, in recent years considerable numbers of Vietnamese citizens have also come to work in Romania. Vietnam is expected to become the main source country of foreign workers in Romania, as the Romanian government recently signed a memorandum with Vietnam that will ease the access of Vietnamese workers to the Romanian labour market. In 2017 Vietnam sent 1,406 workers to Romania.[375] According to data from the Ministry of Labour in July 2018, work permits in 2018 were mainly issued for foreign workers from Vietnam.[376]

Chinese and Vietnamese migrants often work in the garment industry and at shipyards, but also in other sectors. For many labour sectors – including construction, shipbuilding, manufacturing, industry, agriculture and services – foreign workers have been hired from non-EU countries in recent years, including the Philippines, Nepal, India, Indonesia and Thailand.[377] Migrant women from Peru, Thailand and Pakistan work often in domestic households.

During the *Rights at Work* field visit in 2017, stakeholders reported on governmental labour mobility plans and discussions with Ukraine, Moldova and Serbia, to allow workers from these countries to work temporarily in Romania in order to fill the need for both skilled and unskilled seasonal workers. They reported an increase in Ukrainian and Moldovan workers, who often work in construction or agriculture, in areas near the border with Moldova.[378]

Asylum seekers in Romania

According to UNHCR, 4,756 asylum applications were submitted in 2017 by refugees in Romania.[379] Most of them came from Iraq, Syria and Afghanistan. UNHCR stated that "a total of 1,796 decisions have been made on initial applications, of which 47 per cent per cent were answered positively. Fifty-three per cent of asylum applications have been rejected in the first instance. Most successful have been the applications of refugees from Eritrea and Syria."[380] Data from April 2018 reveals that Romania received 580 asylum requests in the first four months of 2018,[381] which shows a decline compared to 2017.

Migrant access to labour

According to EU regulations, EU/EEA and Romanian citizens should enjoy the same labour rights in the country, and EU/EEA citizens do not need a work permit. Third country nationals can work in Romania but do require a work permit and or a residence permit.[382] There are several types of work permit; for permanent workers, seasonal workers, trainees, athletes, cross-border workers or a nominal work permit. As a general rule, the right to extend a

374 https://adevarul.ro/news/societate/analizA-vin-cei-mai-imigranti-fac-romania-1_5bf516f1df52022f75a9438f/index.html

375 See http://vnmanpower.com/en/business-review:-vietnam-exported-1406-workers-to-romania-in-2017-and-took-the-lead-from-china-n491.html#QMZhmlFBflGQ18Rr.99According

376 Next to workers from Turkey, Nepal, Serbia and Sri Lanka,

377 https://www.romania-insider.com/find-employees-romania/

378 Fact finding mission by La Strada International, April 2017

379 Other statistics mention an amount of 4,820 persons https://www.asylumineurope.org/reports/country/romania/statistics, In February 2019, figures for 2018 were not yet available

380 Asylum seekers continued to face obstacles in accessing asylum proceedings. Rejected asylum seekers and Dublin returnees – asylum seekers due to be transferred from one EU state to another, under the Dublin III regulation – continued to be detained

381 https://www.romania-insider.com/record-number-asylum-seekers/

382 Source: https://euraxess.ec.europa.eu/romania/information-assistance/work-permit

temporary stay for employment purposes can be extended up to one year. Highly skilled workers can extend their stay up to two years.[383][384]

To be able to work in Romania and obtain a permit, third country citizens should be invited by their employer, who needs to get permission from the department of Migration at the Ministry of Interior. Once they have this approval, an application for a visa and work in Romania can be submitted. Workers are thus dependent on their employers and obtain a 'tied visa'. However, they can change employers and obtain a new permission under certain conditions. If an employer stops the working contract, the worker is allowed to remain in the country for 30 days, trying to find a new employer. The employer should then announce and explain why they stopped the contract – if the reason is not good enough, they risk a penalty. In cases where the worker declares that there was exploitation or inadequate working standards, then the worker can claim rights.[385] In general, tied visa procedures have been criticised by migrant rights campaigners in Europe for putting workers in a more vulnerable position.

Access to the labour market for refugees and asylum seekers

Legal changes in 2016[386] regarding the legal status of foreigners in Romania have provided equal treatment for certain categories of foreigners, legally resident in Romania, with that of national citizens in many fields; such as access to education, vocational training and scholarships, access to the labour market and social security.[387] Since 2016 asylum seekers can work three months after seeking asylum in Romania. Those who have obtained refugee status can work immediately after receiving their status. Moreover, all recognised refugees are offered a six-month maximum integration programme by the state.[388]

In practice, however, there are many challenges for refugees in gaining adequate access to the Romanian labour market, including a lack of access to qualification courses, education or training, and in general they face limited employment possibilities. They are confronted with obstacles in accessing housing and health care. The US government reported in 2017 regarding the situation in Romania: "While persons granted protection have the legal right to work, job scarcity, low wages, lack of language proficiency and lack of recognised academic degrees and other certifications often resulted in unemployment or employment without a legal contract and its related benefits and protections."[389]

383 See website Euraxess - https://www.euraxess.gov.ro/romania/information-assistance/work-permit

384 For more information see also guide for foreign workers in Romania http://www.mmuncii.ro/pub/img/site/files/d3b2944963cb6acf3ca14598b227ce47.pdf

385 See website General Inspectorate for Migration - http://igi.mai.gov.ro/en/content/seeking-advice

386 Romanian authorities have taken a series of measures to align national legislation with the international standards in the area of migration and asylum. The legal framework regulates the entry, stay and exit of foreigners in/from Romania, their rights and obligations as well as specific measures to control immigration in accordance with the obligations assumed by Romania under international agreements. See https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Migration/GA71stSession/Romania.doc&action=default&DefaultItemOpen=1

387 https://lib.ohchr.org/HRBodies/UPR/_layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/Session29/RO/A_HRC_WG%206_29_ROU_1_Romania_AdvanceVersion_E.docx&action=default&DefaultItemOpen=1

388 There are six centres of the General Inspectorate of Migration, this is where asylum seekers are accommodated. Once they have obtained the status of refugee (average around 3- 4 weeks), they enter into a six-month integration programme. This programme includes Romania language, social benefits, cultural programme. This is partly offered by the State and partly by others – NGOs – via a European funded programme

389 US State department human rights report Romania 2017 https://www.state.gov/documents/organization/277453.pdf

The Romanian National Council of Refugees (CNRR) recognises the limited employment possibilities for refugees, and observes that opportunities depend very much on the person's educational and work background and language and other skills, as well as their access to an existing supportive community.[390]

1.4 Vulnerability to exploitation for workers

Although migrants (including refugees) can work, it is generally acknowledged that they are more vulnerable to exploitation than Romanian nationals, who themselves have difficulties in securing decent work conditions. Several studies[391] show that the quality of employment in Romania has not improved significantly during the last few years – in some cases vulnerability levels have actually increased, and job insecurity remains high. The Romanian economy seems particularly based on low- and medium-skilled labour, where workers face multiple risks that affect their physical and mental health. Wages remain low.

As noted before, access to social protection is limited, in particular for workers without a standard employment contract, and for many self-employed people. For example, it has been estimated that "more than half of the rural population employed in subsistence agriculture is not covered by pensions or unemployment insurance and many do not have health insurance."[392] This lack of social security, coupled with low employment income in general, puts large groups of Romanian workers in a vulnerable position. Lacking sufficient work or income, people are more willing to accept exploitative conditions without protection or the ability to complain. This reflects the 'continuum of exploitation',[393] whereby bad working conditions easily deteriorate into serious forms of labour exploitation, such as forced labour and human trafficking.

Stakeholders reported that migrants (including refugees from Syria) often conduct irregular work, working in the black market as taxi drivers or in other occupations to provide for their livelihood. A social worker at the Romanian Refugee Council revealed in 2017: "In the north part of Bucharest there are many bazaars where many work irregularly without contracts. They work up to 12 hours a day and are paid below the minimum wage. While counselling we explain about the legal terms of employment and inform them about their rights as much as possible."[394] The challenge for social workers is to ensure that exploitation of irregular workers is identified and reported, but at the same time to ensure that workers can keep their employment. In general, a key concern is the lack of fair working conditions for undocumented migrants.

390 Fact finding mission LSI April 2017

391 See for example the study *Occupations with Multiple Vulnerabilities in Romania*, published in the Romanian Statistical Review Nr. 2 / 2018 - http://www.revistadestatistica.ro/wp-content/uploads/2018/06/RRS-2_2018_A7.pdf

392 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-romania-en.pdf - Moreover as from 1 January 2018, the government decided to place the burden of social security contribution exclusively on employees, about which also the International Trade Union Confederation (ITUC) raised concern. https://perc.ituc-csi.org/IMG/pdf/ituc_letter_social_security_romania_cle078615.pdf

393 JRF programme paper: *Forced Labour Between Decent Work And Forced Labour: Examining The Continuum Of Exploitation,* Klara Skrivankova November 2010

394 Fact finding mission Romania, April 2017 – interview Bulgaria Refugee Council

Undocumented migrant workers

It is unclear how many undocumented workers are staying in Romania. Since foreigners without legal residence do not and cannot legally work in Romania, most work without official contracts in undeclared jobs in order to sustain themselves and their families.[395] Undocumented workers are in general restricted from accessing the social security system, aside from some exceptions, and although the public system coexists with a number of private service providers, private health insurance is also often not available for them.[396]

Safe reporting and complaint mechanisms

In general workers in exploitative situations are afraid to complain, fearing they will lose their jobs. Undocumented migrants face additional barriers to accessing protection and redressing abuses. When reporting exploitation in the workplace they risk arrest, detention and deportation. Due to their irregular status, authorities frequently deny their rights to protection and enforce – or threaten to enforce – punitive measures instead.[397] In Romania, as in most European countries, there are in practice no safe reporting or complaint mechanisms in place, regardless of European legal provisions requiring or indicating the need for such mechanisms to be established for reporting labour rights violations.[398]

1.5 Work sectors vulnerable to exploitation

Employment markets that promote adequate working conditions, protect workers and provide access to social and collective rights are likely to have a lower overall risk of precariousness than those that do not. In that sense the Romanian labour market is regarded as vulnerable to exploitation and abuse.[399] Clearly, certain sectors contain more risks for labour exploitation than others, although the ILO stated in 2014 that forced labour exploitation occurs in all productive sectors of the global economy.[400] For Europe, the most comprehensive study on forced labour was conducted by the ILO in 2005, which identified the following vulnerable sectors in general:[401]

- labour intermediaries or recruitment agencies (cross-sectoral);
- sex industry;
- agriculture and fishing;
- construction, mining, quarrying;
- domestic and care work;
- textiles and garments;
- food manufacturing, processing and packaging;
- hotel and service industry sector;
- market trading and illegal activities.

395 PICUM website – www.picum.org
396 ARCA report on implementation sanctions directive in Romania, 2014
397 https://picum.org/focus-area/justice/
398 At European level these include: the Employers' Sanctions Directive (2009/52/EC); the Anti-Trafficking Directive (2011/36/EU) and the Victims of Crime Directive (2012/29/EU) – See PICUM Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse http://picum.org/wp-content/uploads/2017/11/WorkerComplaintMechanismLeaflet_EN.pdf
399 Directorate General For Internal Policies Policy Department A: *Economic And Scientific Policy Precarious Employment in Europe: Patterns, Trends and Policy Strategies*, 2016 - http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587285/IPOL_STU(2016)587285_EN.pdf
400 *Profits And Poverty: The Economics Of Forced Labour*, ILO 2014
401 ILO, *A Global Alliance Against Forced Labour*, 2005, http://apflnet.ilo.org/resources/a-global-alliance-against-forced-labour/at_download/file1;

Although no research reports could be found that indicate the most vulnerable sectors in Romania, relevant stakeholders mentioned in particular construction, agriculture, the shipping industry, fishery, the food sector and domestic work as sectors where exploitative practices occur. Research conducted and registration of labour law violations or identified trafficking victims partly confirms this. "Working 'under the table', with no employment contract and no payment of social contributions, is a phenomenon still widely present in Romanian rural areas to a concerning extent. It happens most frequently in the construction industry, but also in agriculture and forestry."[402] Construction is one of the labour sectors in Romania where there is a clear demand for (migrant) workers and where wages are low.

In November 2018, representatives of the Federation of Employers of Construction Societies (FPSC) asked the government for tax subsidies and incentives to raise the salaries of construction workers and halt the exodus of employees abroad.[403] Construction is a sector where already many migrant workers are employed, including those from Moldova, China, Ukraine and Iraq.[404]

Another vulnerable sector is agriculture. Figures from 2012 show that around 2,682,341 workers work in agriculture,[405] which is the sector with the highest rate of employment for Romanians. Nevertheless workers here are highly vulnerable from a social-economic perspective: many elderly people work in the sector, whose educational and income levels are low.[406] Research indicates that agricultural workers are often daily workers, most of them having no record of employment and getting no salary; [407] they are either self-employed or unpaid family workers.[408]

While in the past mainly Romanians were working in the agricultural sector – many of whom left to work in agriculture in other EU countries – increasingly also migrant workers work in the sector. Several stakeholders consulted during country visits in 2017 and 2018 confirmed they had heard of cases of labour exploitation in Romania's agricultural sector, and referred in particular to the south of the country for such exploitative practices. Each year, the Labour Inspectorate reports sanctions for breaches of labour law by employers related to working conditions in the agricultural sector.[409] Also the governmental Romanian National Agency Against Trafficking in Persons (ANITP) reported cases of trafficking for labour exploitation in agriculture in Romania.[410]

Reported exploitative conditions in the agriculture include:[411]

- lack of/little payment for work performed;
- inhuman living conditions;
- lack of feeding resources/insufficient food;

402 *An Inclusive Labour Market In Rural Areas.* National study 2011-2012, the Ministry of Labour, Family and Social Protection, 2012 http://eurural.ro/uploads/page_attachment/file/27/Raport_RO_241012.pdf

403 http://business-review.eu/property/constructions/construction-federation-warns-government-that-the-construction-market-crisis-could-drag-economy-into-recession-191580

404 See https://www.dcu.ie/sites/default/files/dcubs/romania_national_report_precarir_2016.pdf

405 http://www.agreeproject.eu/wp-content/uploads/2015/01/DESK-REPORT-AGREE-ROMANIA_.pdf

406 http://www.agreeproject.eu/wp-content/uploads/2015/01/DESK-REPORT-AGREE-ROMANIA_.pdf

407 *Rural Development And Reform In Romanian Agriculture* – Centrul Român pentru Politici Economice, 2004

408 http://www.agreeproject.eu/wp-content/uploads/2015/01/DESK-REPORT-AGREE-ROMANIA_.pdf

409 Around 400 in 2011 - http://www.agreeproject.eu/wp-content/uploads/2015/01/DESK-REPORT-AGREE-ROMANIA_.pdf

410 According to the data offered by ANITP, in the year 2012 the number of victims identified as being subject to labour exploitation was 410. From the 410 victims subject to labour exploitation, 294 were identified as subject to labour exploitation in the agricultural sector. From the point of view of the exploitation purpose, from the 294 victims exploited in the agricultural sector, 135 were exploited in Romania.

411 Source: www.agreeproject.eu

- long working hours, including at night and during weekends;
- hard work;
- confiscation of identity documents and mobile phones;
- physical and verbal abuse;
- threats and intimidation over complaints regarding confiscated documents;
- conclusion of false labour agreements or not concluding labour agreements;
- commissions paid in advance by victims to traffickers for the purpose of obtaining a job.

Many small companies are operating in the (agro) food industry, employing two to three people in bad working conditions. These employees are mostly not members of a trade union. As employees working for these small companies often change employers and move on, it is difficult to check the situation and get in contact with workers.

The textile (garment) industry is also regarded as a sector with exploitative working conditions. There are around 4,500 textile factories in Romania, employing more than 200,000 people.[412] In the past decade, International Trade Union Confederation (ITUC) and the Clean Clothes Campaign have reported low pay and long hours in the shoe and garment industries in Romania.[413][414] According to the Clean Clothes Campaign, workers in the textile industry have to meet high work quotas, resulting in frequent overtime that often goes unpaid.

Research on the garment sector further reveals that workers are paid poverty wages, which usually means the minimum legal wage, or even less. "Overtime work is the norm, including on Saturdays and public holidays, and trade unions are weak and too often fail to demand or negotiate better conditions for workers." As many Romanian garment factories make clothes for British fashion brands – for years Britain has been one of the biggest importers of clothes made in Eastern Europe – textile factories currently face difficulties due to Brexit. The fall of the British pound after the Brexit vote cut down factory earnings and the increased price pressure threatens to worsen already often dire working conditions.[415]

Clean Clothes Campaign research identified among others the following poverty indicators among garment workers in Romania:

- inability to regularly pay for utility bills;
- extended rent payments due to inability to afford housing loans;
- owing money to relatives and friends;
- irregular or non-existent medical check-ups (especially dental check-ups)
- poor hygiene;
- inability to pay for school uniforms and school supplies;
- lack of recreation/cultural activities;
- inability to travel outside of town.

412 http://www.balkaninsight.com/en/article/brexit-blues-for-romania-s-embattled-garment-industry-06-11-2018

413 In 2008 ITUC report about exploitation in the textile industry in Bacau. https://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/ITUC_ROM_UPR_S2_2008_InternationalTradeUnionConfederation_uprsubmission.pdf

414 See also reports by Clean Clothes Campaign about harsh labour conditions in textile industry: https://cleanclothes.org/livingwage/stitched-up-factsheets/stitched-up-romania-factsheet; *Labour on a Shoestring* and *Trampling Workers' Rights Underfoot*, as well as the initiative *Change your Shoes*

415 http://www.balkaninsight.com/en/article/brexit-blues-for-romania-s-embattled-garment-industry-06-11-2018

In addition as mentioned, the shipping industry, fishery and non-regulated sectors such as the sex industry and domestic work are sectors where exploitative practices frequently occur in Romania.

1.6 Levels of trade union organisation

Workers have the right to form unions and a limited right to strike and bargain collectively in Romania.[416] Since September 2016, when the Directive on seasonal workforce entered into force in Romania, not only nationals but also migrants have the right to become members of trade unions.[417]

Union density is relatively high in Romania, with between a third and a half of all employees in unions, although figures differ and are apparently very uncertain. As a result, estimates of trade union density vary between 32 and 50 per cent.[418] In comparison, the average density of trade unions for the 28 EU member states is estimated at 23 per cent. It is unclear how many migrant workers are union members, but it is expected that only a small part of this group joined unions.

Trade unions struggle in general with a lower membership. Young people do not see the need to become members of trade unions. There is also competition between trade unions, and sometimes there are complaints that trade unions are not doing enough to support workers.

Trade union structures in Romania are fragmented, with five separate confederations; CNSLR-Fratia, BNS, CSDR, CNS Cartel Alfa and Meridian, each with a substantial number of affiliated federations.[419] In Romania, a union may be formed if it gathers at least 15 employees from the same company. Representation is recognised at entity level for unions gathering at least 50 per cent plus one of the total number of employees. To be recognised, unions must be registered with the court. Unions in the same industry may form a union federation. Several industries and many large companies have union representation, however in some sectors trade unions are not well represented, including in those industries that are most vulnerable such as agriculture, the textile and leather (garment) industry. According to the European Trade Union Confederation (ETUC),[420] only around three to four per cent of the 600,000 clothing and footwear workers in southeast Europe, including Romania, are organised into trade unions.

416 https://freedomhouse.org/report/freedom-world/2018/romania

417 http://www.agreeproject.eu/the-exploitation-of-workers-and-the-situation-of-migrants-in-romania-agree-focuses-on-the-different-aspects-of-the-topic-in-the-country/

418 The unions estimate current density at 48 per cent to 50 per cent, while a study published by the employers' association UGIR-1903 in 2005 calculated that 44 per cent of employees were union members in 2002. However, the ICTWSS database of union membership gives a lower figure, putting union density in Romania at 32.8 per cent in 2008. This is still above the EU average but is below the current estimate from EIRO, which puts union density at 40 per cent.

419 Source: https://www.worker-participation.eu/National-Industrial-Relations/Countries/Romania

420 https://www.etuc.org/en/empowering-textile-workers-south-east-europe

2 Legal framework and non-binding measures

This chapter looks at national legislation related to human trafficking, forced labour and other forms of labour exploitation. It briefly reviews other relevant legislation, as well as corporate social responsibility and business and human rights initiatives.

2.1 Criminalisation of Human trafficking and forced labour

Romania has ratified the main international legislation addressing human trafficking. The country ratified the UN Palermo Protocol on trafficking of 2000, and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. As an EU member the country is bound to EU legislation, including the EU Directive on Trafficking of 2011.[421] Romania is a member of the ILO. The country has ratified 56 ILO International Labour Standards (Conventions),[422] of which 50 are in force, including conventions on child labour, trade union rights and forced labour. However, Romania has not yet ratified the additional Protocol of 2014 to the Forced Labour Convention, 1930 (P029).[423]

Since the enactment of the Romanian Anti-Trafficking Law in 2001, several amendments have been made to the legal framework,[424] along with the adoption of various other pieces of legislation aimed at countering trafficking in human beings. Article 209 of the Criminal Code criminalises slavery. This offence is punishable by imprisonment for a period of three to 10 years.[425] The Criminal Code comprises additionally separate articles for trafficking of adults and minors; Article 210 prohibits all forms of human trafficking. This offence is punishable by imprisonment for a period of three to 10 years. Article 211 criminalises trafficking of minors, while article 367 relates to criminalisation of organised criminal groups. Facilitating the entry or stay of a trafficked person, the use of the services of a trafficked person, child pornography, the exploitation of forced begging and the use of children for begging is also punishable under Romanian law.[426]

The Romanian national legal definition of human trafficking is similar to the definition of the offence provided by the UN Palermo Protocol.[427] Forced labour is defined and included in the penal code law on human trafficking. The law criminalises forced labour with penalties ranging from one to three years' imprisonment, while exploitation of beggary (a separate

421 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

422 See https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102824

423 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:3174672

424 The Criminal Code - Law no. 286 of 17 July 2009 on the Criminal Code was amended and Supplemented, including Art. 182 on the Exploitation of persons, Art. 210 on Trafficking in persons and Art. 211 on Trafficking in minors, Art. 367 on the Organized criminal groups.

425 FRA report 2015, *Severe Labour Exploitation: Workers Moving Within Or Into The European Union* - Annexes on criminal law provisions and inspection authorities

426 https://www.nhc.nl/assets/uploads/2017/07/2015-12-10-NHC_Bulgarije_Rapport_def_LR.pdf

427 Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

offence outside the trafficking article) attracts penalties ranging from one to five years' imprisonment. Enslavement comes with penalties of imprisonment for three to 10 years.[428]

The Romanian notion of 'exploitation' – reflected in Article 182 of the Criminal Code – is large and contains:

- performing labour/services by force or by violating the legal norms regarding labour conditions, payment, health and security;
- keeping persons in a state of slavery, or using other ways to deprive a person of his/her freedom or to force the person into submission;
- forced prostitution, pornographic manifestations for the production and dissemination of pornographic materials or other forms of sexual exploitation;
- forced begging;
- unlawful removal of organs, tissues or cells of human origin.[429]

However, the criminalisation of (labour) exploitation is fully linked to the crime of human trafficking and limited to two situations: subjecting a person to perform a work or service in a forceful manner, and maintaining that person in a state of slavery or similar practices of restriction of freedom or of serfdom. If trafficking or the element of force cannot be proven, cases are often categorised as cases of labour rights violation subject to civil law, or cases of fraud under the criminal law.

Forced marriages and illegal adoptions are not specifically included among the aims of exploitation in the 'trafficking in persons' definition in national law, but sanctions are imposed by other governing rules.[430]

Abuse of vulnerability

There is no specific definition for "the abuse of a position of vulnerability" in Romanian legislation. According to the Romanian government, "the obvious position of vulnerability of a person is referred to as the way in which a person can be recruited for trafficking and exploited. This position of vulnerability can be conditioned by various factors, including isolation of the victim, his/her difficult economic, mental condition, family problems or lack of social resources, etc." By the position of vulnerability of the victim, the government understands "any kind of vulnerability: mental, emotional, family, social or economic."[431]

2.2 Labour Code

The employment relationship in Romania is governed by: individual employment agreements; collective bargaining agreements; the Labour Code; other national laws and secondary enactments; EU law; and international labour-related treaties to which Romania is party.

The main sources of employment law are the Labour Code (Law 53/2003) and the Social Dialogue Law (Law 62/2011).[432] The Romanian Labour Code regulates change for: the relationship between employees and employers, both individual and collective employment

428 US State department Human Rights report 2017
429 https://www.legislationline.org/documents/section/criminal-codes/country/8/Romania/show
430 Ibid
431 Reply from Romania to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties Second evaluation round (Reply submitted on 15 April 2015)
432 See also https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/romania

relationships.[433] Romanian labour legislation is primarily designed to protect employers' rights, in line with EU law.

A national minimum wage and a standard working week of 40 hours or five days is provided in the law. As reflected in the law, workers are entitled to overtime pay for weekend or holiday work or work of more than 40 hours, which may not exceed 48 hours per week, averaged for the month. Excessive overtime may lead to fines for employers if workers file a complaint, but complaints are rare, as noted above. The law prohibits compulsory overtime.

The law further provides the conditions for temporary and seasonal work and sets penalties for work performed without a labour contract, in either the formal or the informal sector. "Penalties for employers using illegal labour range from fines of between 500 lei and 1,000 lei (€ 105 – 210) for cases involving fewer than five people, to imprisonment in cases of more than five people.[434] A temporary contract can last maximum 24 months, which may be extended as long as the total contract length does not exceed 36 months, in accordance with EU regulations."[435]

2.3 Other relevant legislation

As mentioned above the legal framework in Romania complies with existing international legislation related to human trafficking, forced labour and labour exploitation. Further, the legislative framework contains a wide range of other acts that are relevant and relate to equality and non discrimination of workers. Law 202/2002 regarding equal opportunities among men and women; Government Emergency Ordinance 137/2000, related to prevention and sanction of discrimination; and the Labour Code through a special chapter regarding equality of treatment at work.[436, 437]

2.4 Other relevant measures and initiatives

Corporate social responsibility

Corporate social responsibility is slowly getting more attention, in particular since bigger foreign multinational companies are establishing themselves in Romania and introducing CSR to the country.[438] In 2006, the Romanian CSR Forum was established through efforts from individuals and companies, representing SMEs, large businesses and NGOs. The adoption of a National Strategy to Promote Social Responsibility first in 2011 and again in 2016 was an important step for the promotion of CSR policies. CSR in Romania is however regarded to still be at an early stage of development, despite the increased number of CSR initiatives and attempts for coordination and promotion. Social responsibility programmes

433 https://www.codulmuncii.ro/en

434 The employment of third country nationals in an irregular situation is considered to be a criminal offence when more than five persons have been employed under exploitative conditions, as established in Article 264 (3) of the Romanian Labour Code. According to Article 36 of the Government Ordinance No. 25/2014,38 which relates to the Employer Sanctions Directive, the employment of up to five third country nationals in an irregular situation is only a misdemeanor, to be sanctioned with a fine and other accessory penalties. FRA 2015 – Report Severe labour exploitation – annexes

435 Information taken from https://www.state.gov/documents/organization/277453.pdf

436 See website Eurofound https://www.eurofound.europa.eu/country/romania#equality-and-nondiscrimination-at-work

437 See also changes from 2018 - https://www.noerr.com/en/newsroom/News/romania-new-amendments-to-the-romanian-labour-code.aspx

438 https://english.rvo.nl/sites/default/files/2017/03/Factsheet-Romania.pdf

are perceived as not important and irrelevant for most Romanian-owned companies, and initiatives mainly still relate to foreign companies.[439]

Guiding principles Business and human rights

Romania has no National Action Plan on business and human rights; several European countries did adopt such a plan to comply with the UN Guiding Principles of Business and Human Rights of 2011.[440] The UN Working Group on the issue of human rights and transnational corporations and other business enterprises strongly encourages countries to "develop, enact and update a National Action Plan on business and human rights as part of the state's responsibility to disseminate and implement the Guiding Principles on Business and Human Rights." However, interviews with stakeholders in 2017 and 2018 did not reveal any intention from stakeholders, including governmental actors, to develop a National Action Plan. Moreover there seemed to be no discussions or any process started on the issue.[441]

Global Compact Romania

In May 2015, the Global Compact Network Romania was officially launched. The United Nations Global Compact[442] supports companies to, "conduct business responsibly by aligning their strategies and operations with *Ten Principles on Human Rights, Labour, Environment and Anti-corruption*; and take strategic actions to advance responsible conduct by businesses", such as the adopted UN Sustainable Development Goals. The Compact is a voluntary initiative "seeking wide participation from a diverse group of businesses and other organisations to commit to the implementation, disclosure and promotion of the Compact's ten universal principles."[443] The Romanian Global Compact Network currently comprises 26 partners.[444]

OECD Responsible Business Conduct

Although Romania is not yet a member of the OECD, it does subscribe to the OECD Guidelines for Multinational Enterprises. The country also has a National Contact Point for the implementation of the recommendations made by the OECD.[445] Governments adhering to the Guidelines are required to set up such a body, whose main roles are to promote the Guidelines, assist enterprises and their stakeholders, and handle enquiries. The contact point also deals with complaints for alleged non-observance of the Guidelines in specific instances.[446] In April 2018, Romania became a participant in the OECD Development Assistance Committee (DAC).

439 Corporate Social Responsibility in Romania: A Brief Survey
440 https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx
441 See also website OHCHR for updates, https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx
442 https://www.unglobalcompact.org/what-is-gc
443 http://www.globalcompactromania.ro/how-to-join/faqs/?lang=en
444 https://www.unglobalcompact.org/what-is-gc/participants/search?search%5Bcountries%5D%5B%5D=170
445 http://dpiis.gov.ro/new_dpiis/foreign-investments/pnc-national-contact-point/
446 http://www.oecd.org/investment/mne/ncps.htm

3 Labour exploitation in Romania

Romania is known as one of the main countries of origin for victims of human trafficking in Europe, and relevant national stakeholders have been paying most attention to helping Romanian nationals trafficked abroad who have returned to Romania. However, Romania is also slowly becoming more recognised as a transit and destination country for different forms of human trafficking, and a limited number of foreign and national trafficking victims have been identified in the country. In addition, several cases of other severe forms of labour exploitation of national and foreign citizens within Romania have been reported, partly via the media. Nevertheless, identification figures of domestic (trafficking for) labour exploitation cases are low – especially in comparison with western EU countries – regardless of the reported inadequate national migrant and workers' rights protections. Clearly, more awareness and attention is needed for the existing domestic exploitation and vulnerability of workers and protection of workers' rights in Romania, especially with the increase of non-European migrants arriving and residing in the county. This chapter looks at the indications for human trafficking, forced labour and labour exploitation in the country.

3.1 Severe forms of labour exploitation

According to different sources,[447] Romania is a source, transit and destination country for trafficked persons. They are trafficked for labour exploitation in agriculture, construction, hotels, manufacturing and domestic service, as well as forced begging and theft in Romania and other European countries.[448] Romanian women and children are victims of trafficking for sexual exploitation in Romania and other European countries. Romani children have been reported to be particularly vulnerable to forced begging and trafficking for forced prostitution.[449]

According to data released by the National Agency Against Human Trafficking (ANITP), 259 victims of human trafficking (most of them women) were registered in the first months of 2018, of whom 115 were minors.[450] Most of the victims (182) were recruited for sexual exploitation, 40 were victims of forced labour, 16 were made to beg and three to steal. The majority of these victims were exploited abroad, not in Romania.[451]

In the previous year, in 2017, ANITP registered 662 identified victims of human trafficking; 506 women and 156 men, including 340 minors. Of these, 454 were sexually exploited, 79 were victims of forced labour, 43 were put to conducting petty crimes and 35 to beg.[452] In 2016 a total of 756 cases were identified and registered, of which 44 cases of labour exploitation related to exploitation in Romania,[453] while in 2015 a total of 880 cases were

447 See US TIP report 2018 and annual reports by ANITP
448 https://www.state.gov/documents/organization/282803.pdf
449 Reports indicate that 362 children were reported to be subject to trafficking while in the care of the state, particularly in small towns
450 In February 2019, the figures for 2018 were not yet published
451 The main countries of destinations were United Kingdom, Germany, Italy and Spain.
452 According to the US TIP report, Romanian authorities opened 675 new trafficking cases in 2017
453 Human Rights Report 2017 Romania, US State department https://www.state.gov/documents/organization/277453.pdf

registered; 118 for labour exploitation, of which 34 cases related to labour exploitation within the country.[454]

In general, most identified cases in Romania still relate to trafficking for sexual exploitation. But according the NGO ADPARE, trafficking for labour exploitation is starting to be noticed more often. Moreover when cases are identified, often large groups of victims are involved. ADPARE sees cases of forced begging and cases relating to poor families who 'rent' their children out to rich families for some years to work for them, because of their debts. ADPARE assisted 104 victims of trafficking in 2017, including 35 who were exploited in Romania. All these cases related to sexual exploitation.[455]

Identified cases of severe exploitation

As for examples of trafficking for labour exploitation, in July 2016 a large case was revealed in the media of Romanian nationals being severely exploited at a farm. This case is known as the 'Berevoiesti Case', after the name of the village. The investigation involved around 90 suspects, thought to have exploited around 65 people with physical and mental disabilities, or who were very poor. They made the victims log wood, beg or look after animals.[456] At the moment of the raid, conducted by the Directorate to Combat Organized Crime and Terrorism, some of the victims were found chained up, as was reported by the media. The case received much attention in both national and foreign media. The case is still under investigation, but the prosecutor has apparently already stated they have identified practices similar to slavery.[457]

Further in 2017, a case was identified in a Romani community in Mures County, where four children from a family were forced to work. "The accused individuals had lent money to the family at more than 100 per cent interest. When they could not repay, the gang took the family's children and forced them to do manual farm labour over a period of several years."[458]

Case study 1

A 40-year-old man was recruited from the North Station in Timisoara, where he used to hang out in search of work, by the driver of a family from the county of Timis. The family consisted of a mother, father and two boys. The man was offered, and accepted, work in construction in exchange for accommodation, meals and a salary of 300 lei (around € 60).

The man's documents were later confiscated, he was seized and forced to work in the household, as well as in construction and agricultural work without payment. After the first month, the family started to use violence against him and threatened 'to cut his fingers if he tried to run away'.

454 http://iomfrance.org/sites/default/files/Repertoire_IOM_EN_WEB.pdf
455 Information provided by Adpare in 2018
456 See https://www.usnews.com/news/world/articles/2016-07-13/romania-probes-slaves-kidnapped-chained-forced-to-beg
457 See The Telegraph http://www.telegraph.co.uk/news/2016/07/15/romanian-police-investigating-state-within-a-state-where-slaves/ New York Post - http://nypost.com/video/human-trafficking-victims-freed-after-horrific-years-of-captivity/ e)
458 US Department of State's Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/ .

In October 2015 the Brigade for Combatting Organized Crime (BCCO) in Timisoara identified the man as a presumed victim of human trafficking. BCCO Timisoara informed representatives of ANITP Timisoara Regional Centre at the time of identification, in order to participate in the hearing of the victim and to refer him to specialised assistance services. The representative of ANITP referred the victim to AIDRom for emergency accommodation. The man's condition at the time of identification was bad. He was physically unhealthy and filthy because he had lived in inhumane conditions, without any access to a bathroom. Additionally he had invasive memories of trauma, restlessness, irritability, sleep disturbances, lack of appetite and feelings of shame. The family was found to be part of a criminal network and in the case file other injured parties were found, such as young girls forced to practice prostitution by the members of the network.

Five perpetrators were judged and accused of trafficking in human beings for labour exploitation. They received punishments of between two years, six months, and seven years, eight months' imprisonment. The traffickers were further ordered to pay the victim an amount of 13,300 lei (€ 2,793) including 10,000 lei (€ 2,100) for moral damages and 3,300 lei (€ 693) for material damage.[459]

Although numbers of migrant workers have increased in Romania, only a limited number of foreign trafficking victims have so far been identified. According to the US TIP report of 2017, only one foreign victim from Pakistan was identified by an NGO among refugees and asylum seekers. Apparently "dozens of other cases were suspected as well, but these have not been identified", according the report.[460] Rights at Work project partner AIDRom did identify cases of trafficking of migrant workers.

In the past, ANITP reported trafficking of foreign nationals from Moldova, Greece, Switzerland, Bulgaria and Poland, as well as a case in 2010 of 13 Honduran men and women who were exploited in Romania.[461]

Case study 2

In 2010 Romanian traffickers recruited five people from Bangladesh and Malaysia, with the support of a 'recruitment agency' in Bangladesh. The agency helped them enter Romania, but then exploited them for labour. All five paid the traffickers commissions of around € 1,000 for intermediating the procurement of their labour visa and for transport; money that was not paid back to the victims. The promise was that they were going to work on a mushroom farm in Romania for a salary of € 400 a month, with food and accommodation provided by the company.

459 Case information provided by the NGO AIDRom, September 2018
460 US TIP report 2018
461 Source: http://edition.cnn.com/2011/OPINION/02/07/batstone.romania.sex.trade/index.html

Upon arrival the traffickers confiscated their passports and took them to work on a mushroom farm belonging to the traffickers. Here they worked without legal provisions such as salary payment, social insurance, health and security. They did not sign any formal labour agreements and they were not paid for their work at the farm. After the expiration of the short residency visa for business purposes that the victims used to enter Romania, their presence in Romania became irregular. The victims were exploited for about two months at the mushroom farm, where they worked many hours a day, sometimes even at night, 10-14 hours, including Saturdays and Sundays. They received little food during the day, while in the evening they were cooking products bought from their own money.

The perpetrators were prosecuted for the crime of human trafficking and for other related crimes, such as supporting the illegal residence of the victims on Romanian territory. The court showed that the purpose for which the defendants recruited, transported and hosted the foreign workers was to exploit them for labour: "the victims were forced by the situation they were in to work in inappropriate conditions, being treated like profitable merchandises."[462]

Cases of severe labour exploitation

As human trafficking is a crime difficult to investigate and to prove, severe cases of labour exploitation might not often be successfully prosecuted under this crime. As noted, there are in general not many cases identified and prosecuted related to trafficking for labour exploitation in Romania. Partly this might be a result of insufficient attention, awareness or knowledge of relevant stakeholders, and/or a lack of capacity to ensure sufficient outreach to workers within the country, and/or inspection and controls of vulnerable sectors. Clearly, a distinction should be made between trafficking people for labour exploitation and sub-standard working conditions, the latter describing situations in which the person is determined to remain in an exploitative working environment, out of a lack of viable economic alternatives. In practice there can also be mixed exploitation types, situations in which victims are exploited for more than one purpose, "usually having sexual exploitation as the basis and labour exploitation or coercion to commit illegal activities as a second type of exploitation," according to the NGO ADPARE.[463]

When interviewing trade union and Labour Inspectorate representatives in 2017/2018, both revealed they had not identified concrete cases of human trafficking or forced labour in Romania.[464] 'Less serious' cases of labour exploitation were though frequently identified.

462 http://www.agreeproject.eu/wp-content/uploads/2015/01/DESK-REPORT-AGREE-ROMANIA_.pdf
463 ADPARE Report 2014
464 A representative of the trade union CNSRL mentioned not to have any concrete cases of extreme exploitation

Protection of victims of trafficking and access to justice

According to the US TIP report of 2018, Romanian prosecutors processed 481 alleged human trafficking cases in 2017. Of these cases, 57 (12 per cent) were prosecuted for pimping, rape, sexual activity with minors and fraud; indicating a significant increase in the use of the human trafficking article in the criminal code versus other crimes that 'carry weaker penalties'. Prosecutors indicted 362 suspected traffickers in 2017, 222 of whom were convicted, which actually showed a decrease compared to earlier years (472 in 2016, and 331 in 2015). According to data provided in 2015 by DIICOT, the organisation that provides national statistics on the crime of human trafficking, prosecuted traffickers are mainly Romanians. [465]

Witness and victim support and compensation

Victims of trafficking are entitled to assistance and protection services, organised by either the state or NGOs. In specialised centres victims can receive social, psychological, medical and legal assistance, as well as accommodation and meals.[466] They have the right to be a civil party in criminal proceedings and to claim civil damages for material and/or moral damages suffered. If civil damages are ordered by the court, but cannot be claimed because the perpetrator has no income or goods, victims are entitled to claim financial compensation from the state for certain categories of damage.[467] According to the Dutch Helsinki Foundation (NHC) "The majority is for legal representation and support dependent on state-appointed lawyers. In principle, legal aid is only granted if the victim notified law enforcement agencies or the court within 60 days of the date of the crime. This does not apply to minors." A report published by the NHC states that lawyers appointed by the state are, "generally overburdened and poorly paid and do not or hardly communicate with the victim concerned, have little interest in defending the interests of the victim and are only obliged to be present at the court hearings."[468] According to Romanian NGOs, the number of specialised lawyers is insufficient.

465 Deliverable D2.1: Report on the relevant aspects of the trafficking act (geographical routes and modus operandi) and on its possible evolutions in response to law enforcement – TRACE, Trafficking as a Criminal Enterprise, 2015

466 Human Rights Council, Working Group on the Universal Periodic Review, 29th session - National report on Romania submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21

467 Victims of trafficking receive assistance depending on their individual situation and the needs identified, following an early evaluation and comprehensive assessment of each case. Victims can be assisted either by public or private social service providers. These entities can also work together and provide assistance services in partnership. The right to receive assistance and protection is provided to all victims of trafficking without discrimination, regardless of the type of exploitation and their decision to participate or not in criminal proceedings. http://www.anitp.mai.gov.ro/ro/docs/Proiecte/PIP/3597_ANITP_Brosura_A5_ENGLEZA_10_OCTOMBRIE.pdf

468 https://www.nhc.nl/assets/uploads/2017/07/2015-12-10-NHC_Bulgarije_Rapport_def_LR.pdf

4 Coordination and role of relevant stakeholders

This chapter describes the role of different stakeholders in addressing severe forms of labour exploitation, including human trafficking and forced labour. There are various stakeholders active in Romania addressing the issue of human trafficking and forced labour. The overview provided in this chapter is therefore not inclusive.

4.1 Governmental stakeholders

The main governmental stakeholders include:

- The **Ministry of International Affairs**, under which the following bodies play a major role: the General Inspectorate of Romanian Police through the specialised structure DCTP (Directorate for Combatting Trafficking in Persons), the National Agency against Trafficking in Persons (ANITP), the General Inspectorate for Immigration (through the Directorate of Migration); the General Inspectorate of Border Police (through the Directorate for Combatting Transborder Crime and Illegal Migration).
- The **Ministry of Labour, Family, Social Protection and Elderly Persons**, which includes the Department for Equal Opportunities for Women and Men; the National Authority for Child Protection and Adoption; the Labour Inspectorate and the National Agency for Employment.[469]
- The **Ministry of Justice**, including the National Office of Crime Prevention and Cooperation from Recovering the Receivables from Crime; the Bureau of Judicial Statistics.
- The **Public Ministry** including the Directorate for Investigating Organised Crime and Terrorism and the Superior Council of Magistracy.
- And lastly, the **Ministry of Education** with the General Directorate for Education and Lifelong Learning.

The Romanian government did develop a National Action Plan for 2018-2022; further a counter-trafficking framework is in place and the country registers and refers identified trafficked people to social support structures.

National Strategy against Trafficking in Human Beings (2016 – 2020)

Romania's current Strategy against Trafficking in Human Beings (2016 – 2020) provides a framework and a multiagency response aimed at "reducing the impact and the prevalence of human trafficking." The Strategy commits Romanian authorities to taking more prevention measures, to involve civil society and to enhance the quality of protection and assistance offered to victims. Victims' reintegration, improvement of the multiagency investigative response and the capacity to collect and interpret data, as well as optimising national and international cooperation, are key actions included.

469 The General Inspectorate for Immigration carried out 994 actions and controls on the fight against illegal work, at 1,559 companies, which resulted in the detection of 515 foreigners who were engaged in non-legal gainful activities," (Business review).http://business-review.eu/business/human-resources/br-exclusive-all-time-high-number-of-foreign-workers-in-romania-almost-4400-new-work-permits-issued-this-year-more-than-17000-non-eu-citizens-employed-in-the-country-180788

An institutional Taskforce on preventing and combatting cross-border Romanian criminality has been established by the Romanian Ministry of Interior. [470]

National Referral Mechanisms

The Romanian National Identification and Referral Mechanism was approved through Order 335 from 29 October 2007, and entered into force on 17 December 2008.[471] The National Referral Mechanism contains the fundamental principles and legal framework for counter-trafficking actions and measures to be taken by all relevant institutional partners; it defined the stakeholders involved, and includes concrete identification methods and referral procedures.[472]

However, problems were identified related to the implementation of the National Referral Mechanism, including the low level of (financial) resources leading to limited engagement and commitment of anti-trafficking institutions and organisations.[473]

Currently, a year-long nationwide training programme on the Referral Mechanism and its improvement is in progress. It targets mainly representatives of the ANITP regional centres and the state institutions).[474]

Romania has also developed a Transnational Referral Mechanism.

National Agency against Trafficking in Persons (ANITP)

According to Government Decision no. 460/2011, ANITP is the specialised structure under the Romanian Ministry of Internal Affairs, in the field of prevention, monitoring and assessment of people trafficking in Romania. It aims to coordinate, evaluate and to monitor the way in which state institutions implement anti-trafficking policies, including those related to the protection and assistance provided to victims. Different to other national rapporteurs or equivalent mechanisms in most European countries, ANITP is also directly engaged in providing support to victims. The agency works with state institutions and NGOs, both on prevention and direct assistance, as well as with all other relevant stakeholders. ANITP acts as National Contact Point in both the National Referral Mechanism and the Transnational Referral Mechanism.

ANITP is also responsible for maintaining the Integrated System for Monitoring and Evaluation of Victims of Trafficking (SIMEV), a monitoring data tool that can help to identify trends in human trafficking and make them available for stakeholders.[475]

470 Romania Ministry of Internal Affairs, the phenomenon of trafficking in persons. http://santamartagroup.com/wp-content/uploads/2018/05/Romania-SMG-Report.pdf

471 OSCE/ODIHR: National Referral Mechanism. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook. Warsaw, 2004. Accessed: 26.7.2018

472 https://ec.europa.eu/anti-trafficking/member-states/romania-3-implementation-anti-trafficking-policy_en

473 https://ec.europa.eu/anti-trafficking/member-states/romania-3-implementation-anti-trafficking-policy_en

474 Information provided by the NGO Adpare, February 2019

475 https://ec.europa.eu/anti-trafficking/national-rapporteurs/romania_en

There are 15 ANITP regional centres all over the country, whose main roles are to:

- analyse the phenomenon at the local level and inform about the emergence of new modes of operation;
- monitor the implementation of the provisions of the National Anti-Trafficking Plan at local level;
- identify malfunctions and formulate proposals to improve the National Referral Mechanism;
- facilitate local and regional communication between structures involved in anti-trafficking;
- support local anti-trafficking initiatives;
- report to competent authorities how to address the problems faced by trafficked people, related both to direct support and their reintegration.

Labour Inspectorate

The Romanian Labour Inspectorate is a specialised governmental agency, established by law in 1999 and operating under the authority of the Minister of Labour, Family, Social Protection and Elderly Persons. There are 41 regional Labour Inspectorates in every county of Romania, and in Bucharest. Information from 2009 revealed that the Inspectorates employ 1,500 inspectors throughout Romania, about 500 of whom were in Bucharest.[476]

The main responsibility of the Labour Inspectorate is to verify whether employers (either public or private) comply with labour law obligations and regulations related to employment, working conditions and health and safety standards for employees etc.

The agency should:

- identify employers hiring workers without observing the legal employment regulations;
- assess the main reasons behind undeclared labour;
- enforce penalties and propose measures towards discouraging the irregular use of the labour force, while encouraging legal employment;
- provide educational, information and technical assistance services to employers and employees, in order to advise both sides on the provisions of labour legislation.

The agency can identify cases of trafficking for labour exploitation and refer them to criminal prosecution authorities in cases covered by criminal law. The Labour Inspectorate works together with immigration services, who check the legality of workers. The Labour Inspectorate is also responsible for licensing recruitment agencies.

The agency has initiated inspection and awareness-raising campaigns aiming to identify and control undeclared work in sectors where there is a high occurrence of the problem. They also try to prevent children's labour and to promote legal work arrangements.
Over the past few years the number of penalties enforced by labour inspectors for undeclared work has reported to decline slightly – according to the agency as a result of growing awareness of employers and workers that abiding by employment regulations is a benefit for both sides. Nevertheless, the agency has stated that irregular labour continues to be one of the major problems in the Romanian labour market. According the US State Department Human Rights report on Romania in 2017: "The Inspectorate is understaffed and inspectors underpaid; consequently, the Inspectorate had high turnover and limited capacity.

476 Eurofound report 2009

Minimum wage, hours of work, and occupational safety and health standards were not effectively enforced in all sectors."[477]

4.2 NGOs

Alongside governmental actors, there are several non-governmental actors in Romania who play an essential role in addressing trafficking for labour exploitation in the country. Although few, there are also NGOs supporting migrant workers and other vulnerable groups. In 2017-2018 a total of six NGOs were funded for 'integration support' through European funding programmes, the funds for which are channelled to NGOs via the Ministry of Interior. A small business programme project aims to encourage migrants to set up their own businesses.

AIDRom

The *AIDRom Association*, project partner in the Rights at Work project, was established in 1991 by the Orthodox, Calvin Reformed and the Lutheran Church from Romania. Later, the Evangelical Presbyterian and Armenian Church joined the initiative. Today, AIDRom operates three regional counselling centres in Romania, offering complex social assistance to vulnerable groups. They also host a safe house for victims of human trafficking and two shelters for asylum seekers, in strong cooperation with the Romanian governmental authorities. Staff consist of over 30 employees including social workers, legal advisers, psychologists, teachers, management and support staff.[478] AIDRom offers integration programmes and arranges accommodation for refugees to move to (apartments), as well as medical insurance for up to a year. The integration plan is conducted in cooperation with the Inspectorate of Migration, the office of integration. AIDRom has legal counsels for labour issues, who can start civil procedures to claim unpaid wages.

Association for Developing Alternative Practices for Education and Reintegration (ADPARE)

The *Association for Developing Alternative Practices for Education and Reintegration (ADPARE)* is an independent NGO working in the field of human trafficking at the level of prevention and protection of trafficked individuals. The Association was founded in 2003, having as founding members psychologists and social workers with experience in assisting victims of human trafficking, adults with mental health problems, domestic violence victims and individuals deprived of natural and common liberties. ADPARE raises public awareness about human trafficking and promotes the rights of trafficked people, providing assistance and reintegration programmes for victims and those at risk,[479] as well as facilitating access to government and non-governmental services that carry out similar activities. The organisation further facilitates access to educational and vocational systems. ADPARE's beneficiaries are both men and women, adults and children, victims of trafficking for sexual exploitation in Romania and abroad (mostly women, but also men), labour exploitation (mostly men, but also women), forced begging and theft (equally men, women and children). In 2017 ADPARE

477 Human Rights Report 2017 Romania, US State department https://www.state.gov/documents/organization/277453.pdf

478 See also http://aidrom.ro/english/ and http://aidrom.ro/english/index.php/portfolio/prevenire-trafic-de-persoane/

479 The following types of services are provided to the victims of trafficking and exploitation: material assistance; psychological support; medical care; social care; educational assistance; legal counselling (legal advice concerning the rights of an aggrieved individual/witness and court representation in the criminal case, as well as civil case relating to the trafficking situation (damages on the civil side, divorce, juvenile custody etc.), services provided by an associate attorney; support in taking the necessary steps in obtaining the financial compensation); residential assistance.

assisted a group of about 35 Romanians who were exploited within Romania (known as the Argeș case).

There are also other NGOs in Romania working directly on addressing trafficking in human beings, active in different parts of the country, having different types of services available. These include: Reaching Out, Generate Tânără Timișoara, Betania Association, Pro Refugio, People to People in Oradea and the Association Global Help Cariova.[480]

Romanian National Council for Refugees

The Romanian National Council for Refugees (CNRR) is a non-governmental organisation founded in 1998. CNRR promotes human rights, in particular the rights of migrants, refugees and asylum seekers. The Council offers specialised legal counselling for registered asylum seekers in all reception centres in Romania (Bucharest, Galati, Timisoara, Maramures and Radauti), and for those living in other locations, including transit areas and at border crossing points. It further offers specialised assistance for vulnerable groups: unaccompanied children, single women, elderly people, etc. The Council works on research and provides information to relevant stakeholders, including capacity building for among others lawyers, translators and other professionals. Migrants are also supported, e.g. those that received return decisions and others. CNRR employs a social counsellor and integration officer, both working on a project for UNHCR. This project offers legal counselling and support related to social issues and issues of integration. The organisation is the monitoring body for forced returns from Romania to countries of origin, which they started in 2011. [481]

The NGO ICAR Foundation

The NGO ICAR Foundation, established in 1992, is focusing on severe human rights violations, including human rights violations committed by states. Their focus has been mainly on support to victims of torture, including victims of the communist era. The work of the organisation includes: litigation cases, documenting cases, providing direct medical and psychosocial support to victims and vulnerable groups such as migrants and refugees, lobbying and advocacy. Together with AIDRom they offer health services to all refugees who need it. ICAR reports cases of mistreatment by authorities, focusing in particular on the target group of refugees.

4.3 Trade unions

There are a lot of trade unions representing different economic sectors in Romania, the main trade ones are BNS (Block of National Trade Unions) and CNSRL Fratia, as well as Cartel Alfa. These are all trade unions established after the 1990s. In term of members, CNSRL represents around 350,000[482] members via 25 branch organisations, which can either be branch federations or national trade union branches. All over the country there are in total 41 organisations established at 'county' level, so-called filials comprising local offices and/or local contact points.

480 Generate Tânără Timișoara develops programmes for preventing human trafficking, provides psychological and medical assistance to victims and develops programmes for reintegration of victims of trafficking in human beings. Betania Association ensures assistance, counselling and reintegration into the community, for victims of trafficking in human beings

481 See further http://www.cnrr.ro/index.php/en/38-for-single-articles/88-who-we-are

482 Website of CNSRL that states that they have around 800,000 members see http://www.cnslr-fratia.ro/

Trade unions so far mainly support Romanians and/or those with trade union membership. There have been some occasions where also migrant workers and non-members were supported. Union members are mainly Romanian workers; employees of Romanian industries. However also other workers in Romania, migrant workers, can become members. Unfortunately, no information or figures are available on the membership of non-Romanians.[483] For CNSRL trade union membership there is no compulsory condition for applying members to have a labour contract, the condition is to be a worker in Romania, employed or unemployed. Also unemployed people can remain members after being fired.[484]

To protect labour rights, trade unions are providing consultations to legislative processes; providing their opinion on new legislation and legal proposals at national level, setting up a policy of collective bargaining, as well as capacity building for members etc. The head office supports all local offices, which are in direct contact with members/workers. The majority of these contact points and others mainly work with volunteer staff, not having the financial support to employ staff members.

So far trade unions are not yet a formal partner of the official National Referral Mechanism on human trafficking. NGOs working on the issue of human trafficking do work with trade unions, but there is not yet close cooperation on cases of labour exploitation. Whether the trade union (and Labour Inspectorate) act depends very much on individual cases and people, according to NGOs. So far, according to AIDRom, there have been no referrals from trade unions to NGOs, and the trade unions did not identify human trafficking cases.[485] According to AIDRom they are only slowly becoming more interested in the issue of forced labour, exploitation in domestic work etc.[486]

4.4 International organisations

The *International Organisation for Migration (IOM)* was established in Romania in 1992. IOM supports governments in migration management and addressing forced migration. The organisation promotes international migration law and engages in policy development and debate, while providing guidance on protection of migrants' rights and other issues related to migration. The main work IOM is conducting in Romania focuses on irregular migrants, regular migration and counter trafficking. IOM also looks at internal migration flows and integration of migrants and refugees in the country. IOM works closely with governmental, intergovernmental and non-governmental partners, including with AIDRom.[487] They also run the volunteer return programme, "organising the return of trafficked persons from other countries." IOM supports mainly returned Romanian nationals who have been exploited abroad.

483 At the head office level, Mr Constantin, who is the chief of the social department, often receives requests to support non-members. There is no obligation or policy in place to only support union members, 'in case we can, we try to support non-members too'. The union receives though mainly support requests from Romanian workers, working abroad, who are not trade union members. The majority of these cases related to problems with working contracts.

484 Fact finding mission report LSI 2017 – interview with Mr. Constantin of CNSRL

485 Fact finding mission report LSI 2017

486 Fact finding mission report LSI 2017

487 For more information on IOM activities in Romania, see http://romania.iom.int.

There are also other UN bodies and international organisations active in the country, including UNHCR. UNHCR Romania conducts border monitoring in cooperation with NGOs to ensure that asylum seekers can enter and have access to adequate asylum procedures in the country. The agency provides refugees and asylum seekers with general and legal information, and it has worked with NGO partners to train interpreters working in the status-determination process. UNHCR Romania further supports the government to improve Romania's resettlement and integration policies and to improve and strengthen its legal framework. In cooperation with NGO partners, UNHCR also organises awareness-raising and training sessions about the integration of refugees for government officials.[488]

488 https://www.unhcr.org/ro/homepage/despre-noi/resurse/publicatii/romania-eng

5 Summary and conclusions

Romania is a country of origin, transit and destination for trafficked persons. Although figures for identified victims trafficked for labour in Romania have increased, they remain low; 44 cases were registered in 2016 and 40 in the first months of 2018. Most cases of trafficking registered by the specialised national governmental agency ANITP in Romania refer to sexual exploitation of Romanians, either as cases of trafficking for sexual exploitation, or labour exploitation of Romanian nationals trafficked abroad. The media has reported cases of exploitation and abuse of both national and migrant workers in Romania and NGOs have assisted cases, but so far these are only few.

The Labour Inspectorate and trade unions report many cases of violation of the labour law, but mentioned they had not seen severe cases of labour exploitation that can be prosecuted under the criminal trafficking article.

There are though sufficient factors to presume that severe labour exploitation of (foreign) workers occurs much more often than is now identified. Political instability and remaining poverty and social inclusion in the country; low employment and low income rates; the increase of foreign workers working on temporary work visas, and the amount of workers working without contracts (who are often paid below the minimum wage) are all indicators of the existence of high vulnerability for exploitation and abuse.

In general there seems to be a lack of awareness among stakeholders, who interpret forced labour and labour exploitation differently in practice. There is conflation with legal definitions, in that most cases that 'qualify' for human trafficking are cases of sexual exploitation. The criminalisation of labour exploitation is fully linked to the crime of human trafficking – if trafficking, or the element of the *use of force* cannot be proven, cases are often categorised as labour rights violations subject to civil law, or cases of fraud under criminal law. As a result, labour exploitation of workers is not often seen as a serious crime, but rather as 'the norm'. Workers, including migrant workers, are currently not adequately protected under the legal framework, and there are serious barriers to accessing justice.

An increase in awareness, capacity building and action of all relevant stakeholders seems needed, including better monitoring of vulnerable sectors and employment practices, and outreach to (migrant) workers. Stakeholders however doubt if severe forms of labour exploitation are happening in the country, and first want proof of migrant labour/ exploitation before taking further action. Trade unions are supporting workers, but mainly only union members, and they are not active in all vulnerable labour sectors. They do not sufficiently reach out to non-members, including migrant and other vulnerable workers, due to lack of capacity. Close cooperation between trade unions, migrant rights organisations and anti-trafficking NGOs on assistance and referral of cases is also lacking.

The government should ensure better access to employment integration of foreign workers, and should adequately monitor visa and employment structures to identify malpractices, including its own procurement policies. More coordination of and financial support for action is needed, as well as the promotion of multi-disciplinary cooperation of all stakeholders. Also more should be done to make employers and the private sector more accountable. Binding and voluntary initiatives should be promoted to engage them more in the protection of workers and prevent severe forms of labour exploitation. Workers should be made more aware of their rights and receive adequate information, and have access to safe reporting and complaint mechanisms.

6 Recommendations

Based on the Rights at Work assessment and activities, the following recommendations can be made:

1 Continuous national debate and exchange to discuss gaps and possible solutions related to identifying and prosecuting human trafficking, forced labour and labour exploitation should be ensured.

2 More prevention strategies are needed to address all severe forms of domestic labour exploitation and to raise awareness of all relevant stakeholders, including about the vulnerable position of (undocumented) migrant workers.

3 Revision of legislation should be considered to ensure that forced labour and other forms of severe labour exploitation can be better prosecuted under criminal law; harmonised interpretation of national legislation should be promoted too.

4 Visa schemes and programmes set up to ease visas for migrant workers should include clear monitoring mechanisms to prevent labour exploitation of (migrant) workers.

5 Control mechanisms should be set up to monitor businesses' compliance with labour standards and human rights, and to make the private sector more accountable; incentives should be provided for companies that comply, while enacting sanctions for businesses that do not respect human rights.

6 More access to employment and integration into the labour market should be ensured for all workers, including by prevention of discrimination of workers and establishing unemployment protection to reduce worker vulnerability.

7 Decent working conditions including decent remuneration should be promoted, and informal and unregulated work should be brought within the protection of labour laws. Labour rights should apply to all workers, irrespective of migration and residence status.

8 There is a need to increase migrant workers' awareness of their rights by means of information campaigns organised by the state, public institutions, trade unions and NGOs via social media and institutions in Romania, as well as countries of origin of migrants.

9 Workers should be involved in prevention initiatives to address labour exploitation and human trafficking (e.g. worker-led monitoring), and engage migrant workers to share their experience in their country of origin.

10 The identification of severe labour exploitation cases should be increased and better enforcement of labour standards ensured by sufficient monitoring capacity of the Labour Inspectorate. Increased workplace inspections in vulnerable sectors and outreach to vulnerable workers is needed.

11 A firewall should be in place: inspections of violation of labour laws should be de-linked from the control of residence status of workers, so that workers have an opportunity to report exploitation without fearing arrest and deportation.

12 Safe reporting and adequate complaint mechanisms are required to encourage victims to report cases of labour exploitation. It should become easier for workers to file complaints.

13 Promote a multi-disciplinary approach and cooperation, involving and stimulating engagement of trade unions and migrant rights groups and the private sector in national programmes and frameworks. Ensure clearly defined roles and agreements between all relevant stakeholders in addressing the issue of labour exploitation.

14 Improve training and efforts among all relevant stakeholders to identify victims proactively, particularly among unaccompanied children, migrants/refugees and other vulnerable groups.

15 Trade unions should make workers more aware of what unions can do to defend their rights and encourage migrants to join them, since they have legal means of protecting workers. Trade unions should be part of programmes and the institutional framework addressing human trafficking, forced labour and other forms of labour exploitation.

16 Trade unions and alternative workers' organisations should increase access for workers in all vulnerable sectors, and raise more awareness of and advocate for (undocumented) migrant workers' rights.

17 All victims of labour exploitation, including victims of human trafficking and forced labour, should have access to remedies through judicial, administrative and legislative means; prosecutors should be encouraged to request restitution during criminal cases, and to systematically inform victims of their right to pursue civil suits against their traffickers.

18 Compile and provide comprehensive and coherent statistical data on human trafficking, forced labour and other forms of labour exploitation, including on investigation, prosecution and adjudication of human trafficking cases.

19 Ensure adequate funding for NGOs and for implementation of policy actions and measures taken, including for the implementation of the National Action Plan on human trafficking.

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